



## STATE OF NEW JERSEY

In the Matter of Michael Chase,  
Township of Irvington

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2016-3321  
OAL DKT. NO. CSR 05843-16

ISSUED: MAY 1, 2020

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The appeal of Michael Chase, Police Chief, Township of Irvington, Police Department, removal effective March 11, 2016, on charges, was heard by Administrative Law Judge Kimberly A. Moss (ALJ), who rendered her initial decision on March 9, 2020. Exceptions were filed on behalf of the appellant and the appointing authority and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on April 29, 2020, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's thorough and comprehensive initial decision as well as her recommendation to modify the removal to a six-month suspension. In this regard, the Commission has reviewed the extensive exceptions filed on behalf of both parties and the reply filed on behalf of the appointing authority and finds them unpersuasive in establishing that the ALJ's decision was arbitrary, capricious or not based on the credible evidence in the record. Moreover, the Commission agrees with the ALJ regarding the charges and finds that the imposition of a six-month suspension is the appropriate penalty under the facts presented.

Since the removal has been modified, the appellant would normally be entitled to be reinstated to his position with back pay, benefits and seniority following his suspension until the date of his reinstatement. However, the record indicates that the appellant's turned 65 in July 2016, which is the mandatory

retirement age for police.<sup>1</sup> Thus, he cannot be currently reinstated. Additionally, the record shows that his removal from employment was effective March 11, 2016. Accordingly, as the imposition of the six-month suspension would span past his mandatory retirement age, the appellant is not entitled to back pay, benefits or seniority in this matter.

Regarding counsel fees, *N.J.A.C.* 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In this matter, while the penalty was modified, charges were sustained and major discipline was imposed. Therefore, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. Accordingly, the Commission modifies the removal to a six-month suspension. The Commission further finds that, for the reasons presented previously, the appellant is not entitled to receive back pay, benefits and seniority. Finally, counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 29<sup>th</sup> DAY OF APRIL, 2020




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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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<sup>1</sup> See *N.J.S.A.* 43:16A-5(1). Per this statute, it is presumed that the appellant's date of retirement would be August 1, 2016.

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSR 05843-16

AGENCY DKT. NO. N/A

**IN THE MATTER OF MICHAEL CHASE,  
TOWNSHIP OF IRVINGTON..**

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**Joseph E. Donahue, Esq.,** for appellant (Brickfield & Donohue)

**Susan E. Volkert, Esq., Amanda Miller, Esq., Christopher Turano, Esq.,**  
for respondent (Decotiis, Fitzpatrick & Cole)

Record Closed: February 27, 2020

Decided: March 9, 2020

**BEFORE KIMBERLY A. MOSS, ALJ:**

**STATEMENT OF THE CASE**

Appellant Michael Chase (Chase or appellant) appeals his removal by respondent, City of Irvington (Irvington), on charges of conduct unbecoming an employee, misuse of public property, prohibited activity while on duty, violation standards of conduct and violation of obedience to laws and regulations for charges relating to allegations that he directed two police officers to take his wife's car to be repaired while they were on duty. At issue is whether appellant engaged in the alleged conduct, and, if so, whether it warrants removal.

### **PROCEDURAL HISTORY**

On or about December 19, and 20, 2012, Irvington served Chase with a Preliminary Notice of Disciplinary Action (PNDA). Chase requested a departmental hearing which was held between February 8, 2012, and October 5, 2015. Irvington served Chase with a Final Notice of Disciplinary Action (FNDA) dated March 11, 2016, sustaining the following charges: two counts of conduct unbecoming an employee, misuse of public property, four counts of prohibited activity while on duty, violation standards of conduct, and four counts of violation of obedience to laws.

Chase requested a hearing and forwarded simultaneous appeals to the Civil Service Commission and the Office of Administrative Law (OAL). The appeal was filed with the OAL on April 12, 2016. Hearings were held on June 8, 2016, June 15, 2016, July 14, 2016, July 22, 2016, August 17, 2016, October 5, 2016, December 5, 2016, March 15, 2017, April 3, 2017, July 10, 2017, September 29, 2017, October 16, 2017, December 15, 2017, February 1, 2018, February 22, 2018, April 5, 2018, June 5, 2018, November 7, 2018, December 19, 2018, January 30, 2019, February 19, 2019, June 5, 2019, September 10, 2019, and September 25, 2019. Closing briefs were submitted on February 19, 2020. A telephone status conference was conducted on February 27, 2020, at which time I closed the record.

### **FACTUAL DISCUSSION**

**I FIND** the following uncontested **FACTS**:

Chase was the police chief of Irvington. The Irvington Police Department (IPD) mandatory retirement age is sixty-five. Chase turned sixty-five in July 2016.

## Testimony

### John T. Brewington

John T. Brewington (Brewington) was a captain with the Essex County Prosecutor's Office. He is now retired. He was assigned by Deputy Chief Quovella Spruill (Spruill) to investigate charges of improper use of personnel by Chase. At the time he was given the assignment he was in the domestic violence unit of the Essex County Prosecutor's Office. The case was opened by Spruill and Lieutenant Charles Hancock (Hancock). Spruill oversaw and managed the investigation. The investigation was to determine if Chase used police personnel to do non-police duties regarding the repair of his wife's car. Brewington did not lead the investigation. Charges were brought on August 16, 2012, by Detective Sergeant Piwowarczyk and Detective Sergeant Shamberger. Brewington wrote three reports on this matter and sent them to Spruill. He did not review other reports on the case.

The vehicle that was brought to Carfix for repairs by Piwowarczyk was owned by the wife of Chase (Chase vehicle), who was his fiancée at that time. This was verified through the registration and insurance card of the vehicle. Szymczak, the owner of Carfix, also confirmed that the vehicle belonged to the wife of Chase with repair documents that matched Chase's wife's vehicle. The car had been repaired at Carfix several times. Two repair orders provided by Szymczak for April 14, 2012, and August 23, 2012, are for a 2001 white Chevy Monte Carlo with license plate number PRJ65N. A Motor Vehicle Commission (MVC) search verified that a 2001 white Chevy Monte Carlo with plate number PRJ65N was owned by Jessica Chase, the wife of appellant. The plate number was identified by Szymczak as that of car Piwowarczyk brought to Carfix to be repaired. The Monte Carlo has a grey parking sticker in the window. The insurance card lists the insurance company as Geico. It lists the owner of the car as Jessica Dikes, which is the maiden name of Chase's wife. Photos of the car were taken as part of the investigation by Hancock. He also retrieved the motor vehicle information regarding the car from MVC.

There is a video tape and photos of the Chase vehicle at Carfix on August 22, 2012. There is also video of the Chase vehicle being picked up on August 23, 2012. The only dates that there is video of the Chase vehicle being picked up or dropped off are August 22, 2012, and August 23, 2012.

One video from Carfix dated August 22, 2012, shows at 16:20:32 a 2001 Silver Monte Carlo and a blue Ford Crown Royal car. Piwowarczyk gets out of the Monte Carlo and talks to Szymczak. Shamberger gets out of the Crown Royal and speaks with Piwowarczyk and Szymczak. The second video is dated August 23, 2012, starts at 13:32:00, it shows a blue Crown Victoria. Piwowarczyk and Szymczak leave then Shamberger is seen on the video. The 2001 Monte Carlo is seen at the bottom of the tape. At 13:38:23 Piwowarczyk is getting into the Monte Carlo and Shamberger is getting into the Crown Victoria.

Check number 1261 dated August 23, 2012, of RMP Auto in the amount of \$405 was paid to Carfix for repairs to the Chase vehicle. Written on the check is the following: PRJ65N. Brewington does not know what RMP Auto is and did not investigate it. He does not know if the check was given to Carfix while Piwowarczyk was on duty or not.

The EZ pass records show activity transactions for the Irvington Police Internal Affairs unmarked vehicles for August 22, 2012, and August 23, 2012. Transponder number G30220351033 was assigned to the Crown Royal. The EZ pass records show the EZ pass was used by that vehicle on August 23, 2012, at 1:03 p.m. at the East Orange toll. The vehicle again used the EZ pass on the same date at 1:33 p.m. again at the East Orange toll. On August 22, 2012, the Crown Royal used the EZ pass at 4:30 p.m. at the East Orange toll and again at 4:43 p.m. north on the Garden State Parkway. These times correspond to the times Shamberger and Piwowarczyk took the Chase vehicle to Carfix.

Piwowarczyk and Shamberger worked from 8:00 a.m. to 6:00 p.m. on March 14, 2012, August 22, and 23, 2012, in the Internal Affairs department. Cell phone records were reviewed for Piwowarczyk and Shamberger. Shamberger's personal and work cell

phone records were reviewed; only Piwowarczyk's work cell phone records were reviewed. Shamberger had a Samsung cell phone. Shamberger's cell phone records reveal that he received a call from Chase on August 23, 2012, at 12:39 p.m. for thirty-three seconds. Piwowarczyk had a Blackberry cell phone. The phone records reveal four communications with Chase and one missed call. Piwowarczyk received on call from Chase on August 22, 2012, at 7:42 a.m. There was also a missed call from Chase on August 22, 2012, at 7:26 a.m. Piwowarczyk made calls to Chase on August 22, 2012, at 6:41 a.m., August 23, 2012, at 5:57 p.m. and August 22, 2012, at 7:09 p.m. There was no evidence on the cell phone records to prove or disprove the allegations.

The decision on who was to be interviewed was made by Spruill and Brewington. Brewington interviewed Piwowarczyk on August 24, 2012, at 7:06 p.m. with Hancock present. The interview was videotaped. At one point in the interview Brewington left and Spruill came into the room. In one of Brewington's reports (R-1) he wrote that Piwowarczyk felt ordered to take the Chase vehicle to be repaired. In another of Brewington's reports he stated Chase directed Piwowarczyk to have the Chase vehicle repaired. Brewington believes that feeling ordered to do something and being directed to do something are interchangeable. He believes that if the chief asks an officer to do something, it is an order.

Brewington with Hancock present took a statement from Szymczak at Carfix. there was an audio tape of the statement. Szymczak recognized the Chase vehicle by the license plate number and a scratch. He stated that Piwowarczyk brought the car in and paid for the repairs. Piwowarczyk had previously brought the Chase vehicle in for repairs and was always with his partner. Piwowarczyk knew Szymaczak for a few years. He brought the car to Szymczak on March 14, 2012. Those repairs were paid in cash. Piwowarczyk told Szymczak that the car belonged to his boss. Szymczak wrote cash on the March 2012 receipt. Brewington did not coach Piwowarczyk or Szymczak before interviewing either of them.

In his interview, Piwowarczyk stated that Sergeant Gargas was present on at least one occasion when Chase told him to have the Chase vehicle serviced. In October 2011, Gargas and Shamberger were present when Chase told Piwowarczyk to



have the Chase vehicle repaired. Gargas was Piwowarczyk's supervisor at that time. Brewington did not interview Gargas. He does not know if other officers interviewed Gargas. Brewington did not explore whether Piwowarczyk had expertise with cars, worked in a family business, or helped other officers with car issues. He did not explore the rank status of Piwowarczyk.

When a police detective has a problem, he goes to his immediate supervisor. In his experience a detective does not go to directly to the Police Director when there is a problem. Brewington's understanding is that a Police Director is responsible for the budget and policy.

On August 22, 2012, Steven Trombolio, Esq., attorney for Piwowarczyk and Shamberger, sent a letter to Marvin Braker, Esq., attorney for Irvington, regarding a whistle-blower claim of Piwowarczyk and Shamberger. Brewington never saw this letter. He had no knowledge of a whistle-blower suit against Chase. The cell phone records of Shamberger and Piwowarczyk reveal calls from Police Director Santiago, Trombolio, and Breaker. Brewington did not evaluate any of those calls to determine if they were relevant to the investigation. He visually reviewed the cell phone records. He did not check to determine if Piwowarczyk and Shamberger told their supervisor on March 12, 2012, August 22, or 23, 2012, that they were going out of the jurisdiction.

The Chase vehicle was searched by Prosecutor's Office detectives. Brewington does not know if there was a search warrant or if it was a consent search. He did not investigate the conduct of Piwowarczyk or Brewington. He does not know of any deal with Shamberger and Piwowarczyk regarding their testimony at the departmental hearing.

#### Charles Hancock

Hancock was an officer in the Essex County Prosecutor's Office from 1999 to 2014. He retired from the prosecutor's office in February 2014. While he was in the Prosecutor's Office his last assignment was in the Internal Affairs (IA) and official corruption department. He had that assignment for four years. Generally, detectives

must go through the chain of command. If someone at the top of the chain of command tells a subordinate to do something, the subordinate does not have to tell his direct superior unless it conflicts with an order of his direct superior. On August 22, 2012, Hancock received a call from Spruill, who was a captain at that time, instructing him to meet with Irvington Police Officers Piwowarczyk and Shamberger and identify and videotape a car. Spruill had advised him to report to Brewington, who was running the investigation. Brewington oversaw the case because of his rank. Brewington oversaw the case at Spruill's direction and was brought into the case after the Chase vehicle (Monte Carlo) was brought to Carfix on August 22, 2012. Hancock never saw a captain from another division brought into IA to lead an investigation. Hancock, Vinci, and Rectenwald worked this case as detectives for the Essex County Prosecutor's Office. Vinci and Rectenwald did not report to him. He does not sign off on their reports.

On August 23, 2012, Spruill informed Hancock that Shamberger and Piwowarczyk were going to pick up the Chase vehicle and for him to follow them. He met with Piwowarczyk and Shamberger at the Prosecutor's Office. They were in an unmarked police vehicle. He followed them to Carfix while recording the ride to Carfix. Hancock was alone at that time. Piwowarczyk once at Carfix got out of the unmarked blue police vehicle and went into Carfix. Piwowarczyk exited Carfix and entered the Chase vehicle. Piwowarczyk and Shamberger took Route 280 to the Garden State Parkway to the Irvington exit then went to Irvington Town Hall. There was at least one toll from Carfix in Harrison and the Irvington Town Hall. Hancock brought the recording to the Prosecutor's Office and returned to Irvington Town Hall, where Piwowarczyk gave him the invoice from Carfix, a copy of a check, and an audio recording. The audio recording was of a conversation between Piwowarczyk and Chase regarding repairs to the Chase vehicle and where the keys were to the vehicle. The main object of each surveillance was to take pictures and record the Chase vehicle.

On August 24, 2012, Hancock along with Brewington and Lieutenant Roberts took a statement from the owner of Carfix. They received additional invoices on that date. One was an invoice for work done on the Chase vehicle in the amount of \$405, which the owner signed on the back. There was also a work order for March 14, 2012,

in the amount of \$174.47. Hancock next put the recordings on a disc and placed the paperwork in evidence. All of which was turned over to Brewington.

Franciszek Piwowarczyk

Piwowarczyk is a detective lieutenant in the IPD. He was a detective sergeant since December 2011. In 2011 through January 2013, his direct supervisors were Detective Lieutenant Monique Smith and Detective Sergeant Gargas. He became a lieutenant in May 2015. From December 2011 through August 2012, Smith was his direct supervisor. His hours were 8:00 a.m. to 6:00 p.m. Monday to Thursday. Chase was the chief during this time. Piwowarczyk was assigned to IA in 2009. While he was in IA the chief was responsible for the day-to-day affairs of the police department.

The chain of command is detective to sergeant to lieutenant to captain to deputy chief to chief. In IA he could skip the chain of command. If the captain is out, he can go to the chief. There can be a specific assignment that the chief gives and you would only report to the chief. There could be a secret investigation where he would only report to the chief or the prosecutor. If he needed to leave, he would tell his supervisor, if supervisor was present. If supervisor was not present, he would leave word for the supervisor. Piwowarczyk would receive orders from either his direct supervisor or the Chief. Police are not supposed to use police vehicles for personal matters while on duty. If actively conducting an investigation IA officer can leave the jurisdiction.

Piwowarczyk had his own business from 1999 to 2006. His business located at 960 Chancellor Avenue and 783 Chancellor Avenue in Irvington, included car repairs and retail sale of gas. He sold the properties but owns the business. The business has not been active since 2007. RPM Auto Service Inc. was owned by Piwowarczyk. RPM was not doing auto repair business in August 2012. It was transporting goods using tractor trailers. RPM owns the tractors. He sold the business in 2006 but kept the corporation. He is not obligated to tell IPD about RPM unless it conflicts with the police department or if its activities embarrass or bring liability upon the police department.

Piwowarczyk and Shamberger met with prosecutors including Clara Rodriguez and Spruill at their East Orange Office on April 12, 2012, to report issues they experienced in the IA unit including Chase telling them to have the Chase vehicle repaired while they were on duty. Piwowarczyk and Shamberger met again with the prosecutors a week later with their attorney present. They again discussed Chase telling them to have the Chase vehicle repaired while they were on duty. Piwowarczyk was told by the prosecutor to report to them all instances where Chase told him to have the Chase vehicle repaired. He did not write a police report about his meetings with the prosecutor's office.

In October 2011, Piwowarczyk had discussions with Chase about having cars repaired. These discussions took place in the IA office at 561 Nye Avenue, Irvington and at One Civic Square. At that time, he was told to get the Chase vehicle. This conversation occurred while Piwowarczyk was on duty. At that time Gargas was his direct supervisor. Gargas asked him what Chase wanted. Piwowarczyk told Gargas that Chase told him to service the Chase vehicle. Gargas said he did not want to know about it.

On March 14, 2012, while he was on duty, he was told by Chase to have the Chase vehicle repaired. Shamberger may have been present at that time. Chase told him what the problems with the car were. Shamberger could hear this conversation. On March 14, 2012, Piwowarczyk worked from 8:00a.m. to 6:00p.m. The Chase vehicle was in the parking garage on at 561 Nye Avenue, Irvington. Chase gave Piwowarczyk the keys to the vehicle. He drove the Chase vehicle on March 14, 2012, to Carfix to be repaired. Shamberger followed him in an unmarked police car. He does not recall when he picked up the Chase vehicle after the repairs were made. He paid for the repairs in cash. Piwowarczyk was given a wholesale discount on the repairs and parts. Chase repaid him for the repairs in cash.

Piwowarczyk knew the owner of the Carfix repair shop, Szymaczak, through mutual friends. He has known him for eight years. He has no business interest in Szymaczak's car-repair business. He did not receive money for bringing car to be repaired to Szymaczak. Piwowarczyk has referred friends and colleagues to Carfix prior

to August 2012. Prior to August 2012, he introduced Captain Mitchell to Szymczak at Carfix. Mitchell received a wholesale discount from Carfix. Mitchell and Ana Perez purchased vehicles from Piwowarczyk. Piwowarczyk also referred Sergeant Herzer and Officer Halper to Carfix.

Piwowarczyk does not know if Chase knew that the repairs were done at a wholesale discount. Chase knew that the repairs were done at a favorable price because the invoice showed there was no charge for certain things and Chase was given the invoice. Piwowarczyk never asked if Chase could drop the vehicle at Carfix. He never offered to get the vehicle repaired for Chase. Chase did not give him the keys to the vehicle after business hours. Piwowarczyk knew Chase's wife to say hello to.

On August 22, 2012, Piwowarczyk and Shamberger met with Chase about Internal Affairs. After the meeting, Piwowarczyk was told by Chase to follow him. As they approached the break room Chase began speaking about car issues. He was told by Chase to get the car keys from Jessica Chase and repair the Chase vehicle. Chase did not tell Piwowarczyk when to get the vehicle repaired, but he was on duty when he spoke to Chase. Piwowarczyk and Shamberger met with Jessica Chase and received the keys to the vehicle. They then drove it to the Prosecutor's Office. They met with officers in the Professional Standards Bureau of the Prosecutor's Office. At that time pictures were taken of the Chase vehicle. Piwowarczyk did not check the vehicle for registration and insurance. He wrote a letter summary to Spruill at her request.

He drove the Chase vehicle to Carfix. Shamberger followed him in an unmarked police car and the Prosecutor's Office detectives followed them. Once at Carfix he exited the vehicle, told Szymaczak what the problem was with the car and gave him the car keys. At that time Shamberger was behind him but he did not see the detectives from the Prosecutor's Office. Shamberger drove him back to IPD. He later called Carfix to determine when the car would be ready and was told it would be ready the next day. On August 22, 2012, Piwowarczyk recorded the conversation that he had with Chase because the prosecutors instructed him to record all of his encounters with Chase. They spoke about the vehicle and where Piwowarczyk was going to take it for repairs. The recorder was in his pocket. He was walking with Chase when he activated the

recorder. The taped conversation was after the conversation between Piwowarczyk, Shamberger, and Chase. The conversation between Chase and Piwowarczyk took place in the first-floor hallway of police headquarters which is five-feet wide and thirty-feet long between the CIC room and the record room. The break room is also in that area. The hallway is a restricted area. He did not turn it off during the conversation. He turned the recording over the Prosecutor's Office.

On August 23, 2012, Piwowarczyk and Shamberger went to Carfix to pick up the Chase vehicle. Detectives from Essex County Prosecutors Office again followed him and Shamberger to Carfix. He was driving an unmarked police Crown Victoria car. Piwowarczyk paid for the repairs by check in the amount of \$405, received an invoice and drove the Chase vehicle to IPD, followed by Shamberger in the Crown Victoria. He took Route 280 West to the Garden State Parkway and a toll road to get back to Irvington. Chase never reimbursed him for these repairs. The check Piwowarczyk used to pay Carfix was from RPM. Prosecutor's Office told him to use a check for the payment. He called Chase at that time and recorded that conversation. He used a digital recorder. Hancock and Shamberger were present for the conversation. He was in the parking lot adjacent to Irvington City Hall. The recording was turned over to the Prosecutor's Office; however, he kept the digital device.

After August 23, 2012, Piwowarczyk was interview by the Essex County Prosecutor's Office. The interview was recorded. Chase was the highest ranking officer in the police department. He felt compelled to get the car repaired because he was on duty at the time and Chase was his superior officer. Piwowarczyk was not disciplined for getting the Chase vehicle repaired while he was on duty. He signed an authorization allowing the Prosecutor's Office to access his phone records. He does not know if the Prosecutor's Office requested his personal cell phone records. His business cell phone was issued by IPD. It should be used for business. On August 23 and 24, 2012, he received calls from Shamberger on his business cell phone. Chase never directly told him to get the vehicle repaired while on duty, have Shamberger follow him to get the car fixed or use a police vehicle to transport him to and from Carfix.

Piwowarczyk did not challenge Chase because he felt obligated to appease the chief and believed he would be punished in the future if he did not do as Chase asked. Piwowarczyk was not punished by Chase prior to August 24, 2012. He was on duty on all occasions that Chase told him to get the Chase vehicle repaired. Prior to this Chase told him to follow orders or there would be a problem. He did not transport any car other than the Chase vehicle to Carfix for repairs. When he referred Mitchell and Herzer to Carfix, he did not feel that he was obligated to help them.

Piwowarczyk filed a lawsuit against the City of Irvington and Chase. He was represented by Stephen Trimboli. He submitted an administrative report to the Prosecutor's Office. Part of his claim was that he was required to do personal business for Chase. The case settled for \$220,000, but he received \$75,000.

Piwowarczyk met with the Business Administrator Bradley, Marvin Breaker, City Attorney, and Shamberger to discuss difficulties in IA and the misconduct of Chase on the day he taped the conversation with Chase. Taping his conversation with Chase was not discussed at the meeting. He was previously instructed by the Prosecutor's Office to tape Chase.

#### Quovella Spruill

Quovella Spruill is the Essex County Prosecutor's Office Chief of Detectives. She has held that post since December 2015. Spruill was the Deputy Chief of Detectives from June 2012 to December 2015. In August 2012, she was the Captain of the Professional Standards Bureau which investigates criminal allegations in the police departments of Essex County. The Attorney General guidelines govern IA investigations. IA officers are appointed by the chief or director of an agency. They should be upstanding officers with moral and ethical values. Attorney General Guidelines require a complete and thorough investigation. A prosecutor can ask for a broader or narrower investigation. She may not be aware of a prosecutor asking for the investigation to be broadened or narrowed.

There are two separate chains of command at the Essex County Prosecutor's office—one is for prosecutor's staff and one is for investigative staff. A prosecutor can tell a detective to do or not do something. Spruill would not necessarily be informed of this. An Assistant Prosecutor can close a file without her reading the reports.

In August 2012 Spruill and Assistant Prosecutor Clara Rodriguez met with Piwowarczyk and Shamberger. Piwowarczyk and Shamberger asked for the meeting. They had questions and felt that they needed a lawyer. They requested a second meeting with Spruill and had their attorney present. They thought that they may have had Fifth Amendment issues. At this meeting allegations were made against Chase, including that he ordered them to have his vehicle repaired. The Prosecutor's Office initiated an investigation after this meeting.

Spruill oversaw this investigation. Spruill assigned Brewington to work on the case. He worked with Hancock and Rectenwald on the case. Inventory of documents in the investigation was prepared by Spruill. Spruill instructed Hancock to video tape the Chase vehicle going to the mechanic and being picked up at the Carfix. The videotape was made into a DVD. Spruill does not recall if her detectives went inside Carfix. She does not know why Piwowarczyk was not wired when he went to Carfix. It could be because there was not enough time. Piwowarczyk advised the Prosecutor's Office that he had taped recorded a conversation between himself and Chase. Hancock's report is dated August 24, 2012. Brewington's Report is dated September 7, 2012. The EZ pass records were requested to determine if the Irvington police vehicle that followed Piwowarczyk used the EZ pass. She does not remember the results of the EZ pass investigation. Spruill was present in IPD when Shamberger received a call from Chase on either August 23, or 24, 2013, stating that Chase wanted the car back.

Gargas was an IA supervisor in Irvington. She does not recall if he was interviewed in connection with this matter. His name came up in the interview of either Shamberger, who told Gargas that they were taking the Chase vehicle to be repaired. If she gave an order to interview Gargas, it would not be memorialized in a report. If a detective feels that something is not significant, it is not necessarily included in the



report. If a law enforcement officer refuses to speak to a detective, it does not have to be included in the report.

The investigation revealed that Piwowarczyk's family sold cars. The case reports were sent to her in this matter. When a chief of police is being investigated, a lieutenant or deputy chief in the Prosecutor's Office is involved in the investigation. Spruill wrote a preliminary report to open this case. Spruill was present for Piwowarczyk's statement of August 24, 2012. She was either in the room or in the in the observation room. He stated, among other things, that he was advised by Chase that he had to pay the EZ pass ticket, although he stated he paid the toll. Spruill does not recall if he was given a Garety warning. No promises or threats were made to Piwowarczyk or Shamberger.

Spruill, Assistant Prosecutor Pete Polidoro, Chase, and Chase's attorney were present when Chase gave a statement. Chase stated that he never ordered any officer to take the Chase vehicle to be repaired. He may have asked an Officer to take his wife's car to be repaired. He knew that Piwowarczyk's family owned a gas station, sold cars, and did mechanical work. He asked Piwowarczyk if his father was available to work on the car and was told to drop the car off on Chancellor Avenue. After the car was dropped off, he asked Piwowarczyk when the car would be ready. Twice in the past two years Chase stated that he used Piwowarczyk's father's shop to get the Chase vehicle repaired. For the past year he did not know where the car was being repaired. Chase paid for the repairs in cash. Piwowarczyk may have picked up the Chase vehicle from him. Chase gave him the keys during business hours to make arraignments to have the car repaired. The Chase vehicle does not have EZ pass. Chase called Piwowarczyk from his cellphone and office phone regarding the repairs. Piwowarczyk had repairs done on the van of the mother of Chase's children Patricia Vann. Piwowarczyk did not want it known that he assisted in the repairs on Patricia Vann's vehicle.

Piwowarczyk told Spruill that Chase told Piwowarczyk that he had to pay for the EZ pass violation incurred on August 24, 2012, while picking up the Chase vehicle from Carfix.

Most of the reports in this matter were addressed to her. If she signed off on the report, she read it. Once she reviews a report it is forwarded to the assistant prosecutor. Then the case either goes to the grand jury or is closed. The reports submitted to her are not in draft form. Spruill's department did a summary report of the allegations sustained or not against Chase that was given to the IPD. The allegations regarding the Chase vehicle were sustained. They found that Chase directed officers to have the car repaired. An inventory of the items was sent to Director Santiago. An assistant prosecutor reviewed the evidence to determine what was relevant for the administration of the case. Chase's case was referred for administrative action. The discoverable evidence and a letter sustaining the allegations was sent to Santiago. The inventory and letter were done at the same time. Her office reports directly to the prosecutor. Detectives cannot go directly to the prosecutor to discuss a case, but they can speak to an assistant prosecutor. However, detectives can speak to her directly regarding an IA matter. Typically, detectives will go to the next highest person in the chain of command but can also speak to an assistant prosecutor. When a detective goes out of the county on an investigation the lieutenant is informed. In the Professional Standards Division of the Prosecutor's Office there is no chain of command. All are equal and report to either her or the captain. She is not aware of the prosecutor asking for the scope of this matter to be narrowed.

Spruill was in the IPD in August 2012. Shamberger was present and told her that Chase called and wanted to get his car back. She did not memorialize this conversation into a report because she did not feel that it was significant. In Shamberger's interview by the Prosecutor's Office he said that Chase did not speak to him personally, Spruill interprets this to mean that Chase never spoke to Shamberger about dropping off the Chase vehicle.

Porter was a civilian who worked in the Irvington Police Department IA department in 2012. She is now a police officer. Spruill does not recall if Porter was interviewed as part of the Chase investigation.

There are situations where a police officer can go through an EZ pass toll and not pay. An investigation will be done, and the chief will make a decision. In this matter

Piwowarczyk stated that he paid the EZ pass. Spruill does not know if Irvington investigated this issue. She does not know if any administrative charges were brought against Piwowarczyk. She did know that Piwowarczyk was promoted. Spruill did not have any issues with Piwowarczyk's credibility. Spruill did not know that Piwowarczyk and Shamberger had filed a tort claim at the time of the interviews. She did not discuss a lawsuit with them. She has no knowledge that Santiago wanted Gargas to bring charges against Chase. She did not consider charging Piwowarczyk or Shamberger.

Spruill did not investigate the EZ pass charge because Piwowarczyk said that he paid the toll.

#### Melvin Shamberger

Shamberger is a retired Irvington police officer. He attained the rank of sergeant prior to his retirement. He began working for the IPD in 1991. He began working in the IA division in 1998.

In 2011 Chase was the chief and Shamberger was working in IA. In 2012 he reported to Monique Smith. IA was under the direct control of Chase. He and Piwowarczyk met with the Prosecutor's Office in August 2012 because they were concerned about investigations. They advised the Prosecutor's Office that Chase ordered them to take the Chase vehicle to be repaired during business hours. He was told if it occurred again to contact the Prosecutor's Office.

Shamberger worked the 8:00 a.m. to 6:00 p.m. shift. In October 2011, Chase came into the IA office and told Piwowarczyk that he needed the Chase vehicle repaired and handed Piwowarczyk the keys to the car. Chase also told Piwowarczyk to have Shamberger follow him to the auto repair shop and bring him back, which Shamberger did.

In March 2012, Chase gave Piwowarczyk the keys to the Chase vehicle saying it had issues. Piwowarczyk drove the Chase vehicle to the auto repair shop followed by Shamberger driving a Crown Victoria, Shamberger then drove him back to IPD. This

occurred at approximately 8:30 a.m. Shamberger drove Piwowarczyk to pick up the Chase vehicle at approximately 3:30 p.m. on the same day. Piwowarczyk paid for the repairs. It took approximately one hour to take the Chase vehicle for repairs and return to IPD.

On August 22, 2012, Chase spoke to Piwowarczyk after which Piwowarczyk told him we have to get the Chase vehicle repaired. Chase did not speak to him at that time. Shamberger did not hear the conversation between Chase and Piwowarczyk. They retrieved the keys from Chase's wife as per Chase's instruction. She gave them the keys and told them the location of the Chase vehicle. Prior to retrieving the keys Shamberger told Spruill that they were taking the Chase vehicle for repairs. Spruill told him to bring the vehicle to the East Orange Office of the Prosecutor's Office, which they did. Once at the Prosecutor's Office they were met by Hancock and other detectives from the Prosecutor's Office who took pictures and videotaped the Chase vehicle. Piwowarczyk then drove the Chase vehicle to the repair shop. Shamberger followed Piwowarczyk and was followed by members of the Prosecutor's Office. Once the Chase vehicle was left at the repair shop, Shamberger drove Piwowarczyk back to IPD. Shamberger was on duty when all of this was occurring. Chase never directly told Shamberger to pick up the Chase vehicle or follow Piwowarczyk to get the vehicle repaired. Shamberger saw Chase give the car keys to Piwowarczyk.

A supervisor needs to know where a subordinate is at any given time. Shamberger did not tell his supervisors when he and Piwowarczyk took the Chase vehicle for repairs. In March 2012 Smith was his supervisor.

On August 23, 2012, the members of the Prosecutor's Office, including Spruill came to the IPD IA unit to review its files. On that day Chase called Shamberger stating that the Chase vehicle needed to be picked up at approximately 1:00 p.m. Chase also told him to cooperate with the Prosecutor's Office. Spruill and Hancock were present when he received the call from Chase. Shamberger told Spruill of his conversation with Chase. She told him to get Piwowarczyk, pick up the car, and bring it back. Shamberger drove a Crown Victoria vehicle with Piwowarczyk, followed by officers from the Prosecutor's Office to retrieve the Chase vehicle. After paying for the repairs

Piwowarczyk drove the Chase vehicle back to Irvington. At this time, Smith was in charge of IA, Shamberger was a detective sergeant. Shamberger was on duty when he followed Piwowarczyk to have the Chase vehicle repaired on both August 22, and 23, 2016. Piwowarczyk was a subordinate sergeant to him. At that time, he was the senior officer in IA because Lieutenant Smith was on vacation.

In 2011 Shamberger talked to Gargas about taking the Chase vehicle in for repairs but Gargas said that he and Chase were friends. In 2012 Shamberger wanted to have a meeting with Chase about his not wanting to take the Chase vehicle for repairs although there was a meeting before his concerns were addressed. After the meeting Smith told Shamberger if he went against Chase, he would be suspended and fired. Smith had been IA supervisor for thirteen years. Shamberger felt that he had no choice but to assist Piwowarczyk in taking the Chase vehicle for repairs.

There was a meeting in February 2011 in the IA conference room with Chase Piwowarczyk, and Shamberger. Captain Amanda Koontz had been removed at this time and Chase stated that he would get her job for going against him and not doing what he wanted done.

Shamberger filed a lawsuit against Irvington. Piwowarczyk joined in the lawsuit. The claim was about retaliation. Shamberger felt that he was retaliated against because he brought his concerns to the Prosecutor's Office. Shamberger retired before the lawsuit settled. The lawsuit eventually settled for \$100,000 in February 2016.

Shamberger gave a statement to the Prosecutor's Office on August 22 or 23, 2012. He did not have an attorney present for the interview. Shamberger had no input into the questions that he was asked. He did not speak to anyone in IPD regarding the interview. On August 22, 2012, Shamberger did not hear Chase tell Piwowarczyk to get the Chase vehicle repaired. On March 14, 2012, Shamberger was present when Chase handed the car keys to Piwowarczyk and told him to get the car repaired. Shamberger is not aware of anytime that Piwowarczyk took the Chase vehicle for repairs without out Shamberger.

Shamberger testified against Chase at a Departmental Hearing. As a result of his testimony he was retaliated against by Chase. He was brought up on charges. The charges against him were truthfulness, not completing investigations, and sick rule violations. The charges were later dismissed by the city attorney. He never gave false testimony.

Shamberger retired without getting any medical benefits from Irvington. He retired while Chase was suspended due to the retaliation orchestrated by Chase and Mitchell.

The Prosecutor's Office took over and audited the IPD on or about August 23, 2012. Shamberger gave a statement to Spruill and Hancock on August 24, 2012, regarding among other things, he and Piwowarczyk taking the Chase vehicle for repairs while they were on duty.

#### Clara Rodriguez

Clara Rodriguez is the chief assistant prosecutor for Essex County. She has worked in the Prosecutor's Office for twenty-nine years. She reports to Acting Prosecutor Robert Laurino.

Rodriguez knew Chase prior to 2011. There was an audit of the IPD in 2012. In 2012 Piwowarczyk and Shamberger were interviewed as part of the audit.

Rodriguez does not specifically review each piece of evidence in an investigation. Assistant Prosecutor Peter Polidoro was the primary prosecutor in this investigation. She did not review the reports of Brewington and Hancock to Spruill before they were finalized. Rodriguez reviewed portions of Chase's interview tape with the prosecutor. She saw the tape of the Chase vehicle being taken to for repairs as well as the audio tape regarding the EZ pass. The fact that Piwowarczyk wrote a personal check to pay for the repairs showed that he could not say no to Chase. She met with Polidoro to determine who would be interviewed. She does not recall anyone other than Piwowarczyk, Shamberger, and Chase being interviewed. Rodriguez knew Gargas.

When Gargas was appointed to run IPD IA, he told her that he wanted to be left alone in peace with no problems and retire.

A supervisor of a squad should know where her subordinate's location. An officer should tell his supervisor when leaving the municipality.

Piwowarczyk was ordered by Chase to get the Chase vehicle repaired during work hours. Prosecutor's investigators followed Piwowarczyk taking the Chase vehicle to the repair shop. After reviewing it was decided to bring administrative charges as opposed to criminal charges against Chase. In a meeting with Spruill, Rodriguez, Polidoro, and the prosecutor regarding Chase's interview it was agreed that Chase had not been truthful. The charges recommended against Chase were violation of rules and regulation of general conduct, disobeying laws and regulations, prohibited activity on duty (private business on duty), and truthfulness. When a chief tells a subordinate officer to do something it is an order. An order must be lawful to be followed by a subordinate. A direction and an order are the same thing. The truthfulness charge is because Chase did not admit that he ordered Piwowarczyk to take the Chase vehicle for repairs, when the evidence was clear that he did.

The Attorney General guidelines regarding police chiefs state that when administrative charges are recommended against a chief of police, it goes to the municipal authority. They also require a complete and thorough investigation.

The recommendation was that charges were sustained. Notice that the charges were sustained was sent to Santiago on November 28, 2012. Prior to the recommendation going out there was a meeting the lieutenant in investigation, the chief of detectives, the prosecutor in the investigation, the first assistant prosecutor, and the prosecutor. Rodriguez and Spruill reviewed the information and approved the letter. The letter was drafted by Polidoro but was sent under Rodriguez signature.

An EZ pass violation is not normally investigated by the Prosecutor's Office. In this matter the EZ pass violation was evidence that Piwowarczyk was driving the Chase vehicle during work hours.

Peter Polidoro

Polidoro is an Assistant Prosecutor in Essex County. His supervisor is Rodriguez. In 2012 he was assigned to the Professional Standards Unit, which reviews allegations against law enforcement officials and public officials. Rodriguez was the supervisor of the Professional Standards unit. He was in that unit from May 2012 to October 2015. Polidoro knows the Attorney General guidelines that address how to conduct an IA investigation. The investigation must be thorough and impartial. The Prosecutor's Office interviewed Piowarczyk, Shamberger, Monique Smith (Smith), and the owner of SOS Carfix. He does not recall if he knew that there was a supervisor named Gargas in IPD. Smith was the day to day supervisor of IA in IPD in 2012.

Rodriguez advised Polidoro that Shamberger and Piowarczyk stated that Chase ordered them to take the Chase vehicle for service during business hours. After they reporting this Chase called them to have the Chase vehicle serviced. Polidoro provided legal support to the investigators. Polidoro did not create the investigation plan for the Chase vehicle case. He did not tell anyone who to investigate. Although Polidoro could ask the detectives who to interview, he does not recall if he asked the detectives to interview anyone in this matter. He reviewed the reports.

Polidoro and Spruill interviewed Chase. Rodriguez asked him to sit in on the interview of Chase. Chase was asked if he asked Shamberger or Piowarczyk to take the vehicle for service which he either denied or said he did not recall. He observed the interviews of Shamberger and Piowarczyk.

In his interview, Chase said that he asked Piowarczyk if his father could work on the Chase vehicle. Chase did not speak to Piowarczyk's supervisor at this time. He called Piowarczyk on the cell phone. Piowarczyk responded to drop the car off. Chase left the car on Chancellor Avenue in Irvington. Across the street from the gas station that Piowarczyk's father owned. Chase would give Piowarczyk the key to the car during working hours. Chase did not know where the car was taken to be repaired. Chase asked Piowarczyk when the car would be ready. Chase had previously had



relatives of Piwowarczyk repair the car, twice in the past year. Chase met someone named Chris who worked on the car. He also met Piwowarczyk's father. Chase usually paid in cash for the repairs. Chase also stated that he told all officers not to use personal cars while on duty due to insurance issues.

Chase also stated in the interview that the mother of his children purchased a van from Piwowarczyk. He would call Piwowarczyk on weeknights and weekends regarding car repairs.

Shamberger was interviewed on August 24, 2012. Polidoro reviewed the interview. Shamberger stated that he told Gargas, who was a supervisor in IPD, that he had to take Chase's vehicle for repairs. This occurred in approximately 2011.

Shamberger overheard a conversation between Chase and Piwowarczyk where Chase dropped the car keys on the desk and told Piwowarczyk what to do with the car. This was a direct order by Chase. Shamberger stated that he was ordered by Chase to take the Chase vehicle for repairs. Polidoro does not believe that Shamberger was told directly by Chase to get the car fixed. This was in Polidoro's report Shamberger feared that he would be disciplined if he did not do what Chase asked. Taking the Chase vehicle for repairs could not be done by one person.

At the conclusion of the investigation, Polidoro reviewed the tapes, transcripts, reports of the detectives, calls between Chase and Piwowarczyk, statements, documents from Carfix, the Attorney General guidelines and the IPD rules, regulations, and directives. He reviewed the reports along with Rodriguez, Spruill, and the prosecutor for completeness. The investigation was primarily done by the detectives. He reviewed and collated the investigation documents. He obtained documents from Carfix for March 2012 and August 2012. There were no records for work done on Chase's vehicle in 2011. He reviewed the investigation with the detectives to determine that it was done within the AG guidelines.

The investigation was run by the Professional Standards detectives, their supervisors, and Rodriguez. It was a collaborative investigation. After the investigation was completed, he gave input, but was not on the executive staff.

Polidoro prepared a draft and sent it to his superiors. His superiors decided what they would do with his findings. He was on vacation when the letter was sent to IPD Director Santiago. Rodriguez signed the report. The basis for the report was the taped conversations between Chase and Piwowarczyk where Chase directed Piwowarczyk to take his wife's car for service. Chase was evasive when he was interviewed. Initially, he denied having Piwowarczyk take his wife's car to be serviced then he stated that he did not direct Piwowarczyk to take the car to be serviced. The report was also based on the video of the car drop off, the toll records, and the EZ pass violation. Polidoro determined that Chase ordered Piwowarczyk to have the Chase vehicle repaired during business hours. The finding of the report was that Chase directed Piwowarczyk and Shamberger to take the vehicles for repairs.

If superior officer directs or orders a subordinate officer to do something it is an order. An officer cannot refuse a supervising officer. Polidoro does not recall if he knew that Piwowarczyk and Shamberger filed civil charges against Chase.

IPD had a chief and a director. The chief's role was to run the day-to-day operations. The Director addressed policy.

#### Felicia Taylor

Felicia Taylor (Taylor) has worked for IPD for twenty-six years. She was Chase's administrative assistant from 2005 to 2012. She worked for Chase for over ten years and had all positive performance reviews. In 2012 Taylor worked Monday to Friday 9:00 a.m. to 4:30 p.m. At one point she worked from 8:00 a.m. to 8:30 p.m. and 7:30 a.m. to 2:30 p.m. Taylor's hours from March 2012 to August 2012 were 8:00 a.m. to 3:30 p.m. She does not know where she was on specific day on March 2012. She does not recall what day of the week March 14, 2012, and March 22, 2012, were. She does not recall what she did on those days. She had a week vacation in August 2012.

Taylor saw Shamberger regularly. She knows Piwowarczyk. She knows that he has worked on cars for other officers. Piwowarczyk did work on her son's car between 2008 and 2010. At that time, she followed him to the repair shop during the day while they were both working. They left the car and he drove her back to IPD in a police car. She was on a break at that time. Piwowarczyk took her to pick up the car the next day. She also had previously contacted Piwowarczyk about trouble she was having with her truck. She dropped the truck off at a gas station on 40th street and Chancellor Avenue in Irvington with Piwowarczyk's father. Taylor saw Chase give money to Piwowarczyk in November 2012; she does not know the amount.

Taylor was aware of Piwowarczyk fixing cars for others in IPD as well as being involved in work being done on the vehicle of Patricia Vann. Piwowarczyk was Chase's mechanic. Taylor saw Chase pay Piwowarczyk for car repairs.

Taylor sat in the back corner of the record bureau on the right side initially. She was moved to the left side of the room next to the records supervisor. Although the Chief's office was upstairs, he was in the records room often. Chase was in her eyesight for three hours per day. The CIC room is across the hall from the Record Room. She cannot see the CIC room from her desk.

She never witnessed Chase order Piwowarczyk or Shamberger to work on the Chase vehicle. She had regular contact with Piwowarczyk and Shamberger and never heard them complain about having to get work done on the Chase vehicle.

Shamberger and Chase were friends in 2012. In October 2012, Taylor received a letter from Shamberger stating that he could not contact Chase, who he needed to sign off on cases. Taylor contacted Chase to inform him of the letter. Chase came in and met with Shamberger and Piwowarczyk. Chase dictated a memo with the steps to take if he could not be reached. Chase told Shamberger and Piwowarczyk to bring him all of the cases. Chase was on vacation at that time and came in from vacation. The memo was maintained in the correspondence file. Taylor was accused of giving files to Chase, which she denies. Some files disappeared in November 2016.

In the summer of 2012, the Essex County Prosecutor's Office investigated IPD. They did not take charge of IPD IA department, but they were a daily presence at IPD. In December 2012, when Chase was suspended, she was working for Acting Chief Mitchell. When Chase returned, she continued as his assistant until he left the second time.

The files that went missing were files that she typed for Chase when Santiago and Bowers were the director respectively. However, the letters and memos that she typed for Chase are saved on her computer. Taylor kept personal copies of memos that she wrote for Chase.

#### Monique Smith

Monica Smith (Smith) is a captain in IPD. In 2011–2012, she was assigned to patrol as a sergeant. She was later assigned as a sergeant then a lieutenant in IA. She began in IA approximately September 2011 or October 2011. Gargas was the supervisor when she arrived at IA. She was promoted to lieutenant in December 2011. At that time Shamberger and Piwowarczyk worked in IA under her. Smith became supervisor of IA when Gargas retired, approximately January 2012.

As the supervisor of IA, she was responsible for the activities. In addition to Piwowarczyk and Shamberger, Detective Gardiner and Mondalis were assigned to IA in December 2011. Part of her job as supervisor of IA was to know what her subordinates were doing and where they were daily. If a detective left the office, the procedure was to let her know where they were going and on what case. She met with the detectives every morning. When the detectives completed their reports, the reports were turned over to her for review. After she reviewed the reports they were turned over to Chase. Smith had contact with Chase on a daily basis. In March 2012 and August 2012, she was the supervisor of IA. She was on vacation for part of August 2012. When she was on vacation Shamberger was in charge in her absence.

While she was on vacation in August 2012, Porter called her to inform her that the Prosecutor's Office was in IA meeting with Shamberger. She is aware that Chase was the subject of an investigation by the Prosecutor's Office and a discipline was brought against him. She is not aware of the actual charges, but they had to do with Rashan Simpson, the son of a friend of Chase. She did not receive the prosecutor's report regarding Chase.

Smith was not informed by Piwowarczyk or Shamberger that from January 2012 through August 2012 that they were leaving the city to do an errand for Chase. They were supposed to let her know if they are leaving the office for the chief or anyone else. When a detective is told to do something for Chase, Smith would be informed. Piwowarczyk and Shamberger never told her that they were leaving the office to have repair work done on the Chase vehicle. The General Order states that when leaving the office, you must have the permission of a supervisor. Shamberger and Piwowarczyk did not seek permission to go to Harrison to have work done on the Chase vehicle. If she had been informed that Chase told them to have work done on the Chase vehicle, she would have told them not to do it and write a report. If Chase had engaged in wrongdoing, she would have reported it. Chase had previously reported her for leaving her weapon in a shopping cart.

Chase had told her that Piwowarczyk's family did auto repairs and sold cars. Smith knows of others in IPD who have had Piwowarczyk's family work on their cars.

Chase's policy was that only civilians on lunch break could use personal cars. The atmosphere in IA was cordial. Piwowarczyk spoke to her about his family coming from Poland and selling and repairing cars. Chase and Shamberger were friendly and had a good relationship.

In November 2012, Smith and Mitchell were with Chase when she was informed that Shamberger wrote a letter about Chase being unavailable. Chase dictated a letter to Shamberger that he could be contacted on the taped line or Shamberger could dictate a memo regarding reaching Chase.

Smith and Chase dated between 2002 and 2003.

All IPD officers must be familiar with the rules and regulations of IPD. Shamberger and Piwowarczyk were familiar with the rules and regulations of IPD.

Santiago was the Director when Smith was in IA. She knew that Santiago was responsible for policy and Chase was responsible for the day to day running of IPD. At times Santiago would give orders. Smith would tell Chase. He would say which of Santiago's orders to follow. The others he would speak to Santiago about, Santiago would call her if he felt another charge should be included in a discipline. She would inform Chase of Santiago's statement. Smith could not add charges, Chase was the charging officer.

In May 2012 Santiago suspended Chase without an investigation. Smith believes the matter must go to the Prosecutor's Office before Santiago could suspend Chase. Santiago told Smith to draft the charges against Chase. When she was assigned to IA by Chase in 2011, she had no prior IA experience.

#### Patricia Vann

Patricia Vann has three children with Chase. She has known Shamberger for twenty years through his work with Chase. She has known Piwowarczyk for approximately thirteen or fourteen years. Piwowarczyk sold her four or five vehicles over an eleven-year period. When she purchased the first vehicle from Piwowarczyk, he was on duty when he took her to the vehicle. She picked up one of these vehicles on 40th Street in Irvington. The last vehicle she purchased from Piwowarczyk was in July 2011. She paid cash for all the vehicles. For the fourth vehicle, she worked out a payment plan with Piwowarczyk. The payments were to be made over a seven-month period. Over the years, Piwowarczyk made repairs to her car. Piwowarczyk's father made some of the repairs. Chase never ordered Piwowarczyk to make the repairs on her vehicles. The purchases and repair discussions were between her and Piwowarczyk. When she called Piwowarczyk about the cars, he was on duty.

Nicolas Gargas

Nicholas Gargas (Gargas) was with the IPD for twenty-nine years. He retired in 2011. At that time, he had been a sergeant in IA for seven years. He had contact with Chase as a union representative. He and Chase agreed sometimes and disagreed at other times. Their relationship was mostly friendly. Chase was a supervisor over him for most of his career. While he was the supervisor of IA Shamberger and Piwowarczyk were in IA. The decision to remove someone from IA was Chase's decision. At one point, Shamberger, Piwowarczyk, and Gargas were the only officers in IA. The work was divided among the three of them. If Piwowarczyk or Shamberger were leaving for an investigation, they would have to inform him. They never told him that they were taking the Chase vehicle for repairs. He does not recall saying that he did not want to hear about the Chase vehicle getting fixed. It was known through IPD that Piwowarczyk was the person to go to if you needed car repairs. Piwowarczyk assisted him with a car repair.

Chase, Shamberger and Piwowarczyk seemed to get along. Shamberger and Piwowarczyk never told him that they thought they were in jeopardy of losing their jobs.

While Gargas was in IA, Santiago was the police director. He met with Santiago two to three times a week. Santiago told him if Chase is doing something wrong, go to the Prosecutor's Office. Santiago could pave the way. Santiago brought this up two to three times. Santiago and the Prosecutor's Office Chief of Detectives Ambrose were friends. Chase never asked him to do anything inappropriate. He had no problem with Chase. Santiago made requests and orders to Gargas which he took to Chase. At times, Chase told him not to comply with the request of Santiago. Gargas retired because he felt that he was being used as a chew toy between Chase and Santiago because Chase was his boss and Santiago was the administration head of the department. Police officers cannot use private vehicles when engaged in police duties.

Gargas retired one month short of having served thirty years with IPD. He felt that he was being pulled in opposite directions by Santiago and Chase. He returned to IPD as a civil police aide. He was not in IPD in August 2012.

Gargas never heard Chase order Piwowarczyk to have a vehicle repaired. Piwowarczyk never told him that he was going to take the Chase vehicle for repairs.

Dwayne Mitchell

Dwayne Mitchell (Mitchell) is a captain in the IPD. He has been with IPD for twenty-five years. In 2012, his duties were narcotics enforcement and the Safe Unit. When Chase was out, he was the officer in charge. Mitchell retired on October 31, 2017. He was deputy chief. He knew Shamberger and Piwowarczyk. Piwowarczyk's family owned a gas station and auto repair shop in Irvington. Piwowarczyk helped him and others with their cars. Mitchell purchased two vehicles from Piwowarczyk, who also came to Mitchell's house to tow a car. Mitchell does not know if Piwowarczyk was on duty either time. Mitchell never ordered Piwowarczyk to do anything regarding the three car transactions. These transactions occurred when Mitchell was Piwowarczyk's superior officer. Piwowarczyk's father owned a gas station. Which is where the repairs on Mitchell's car were done. Mitchell paid cash on all the transactions.

Mitchell thought Chase got along with Piwowarczyk and Shamberger. He did not observe any friction between them. Santiago became the police director in approximately 2008. Police director is a civilian position. The director is responsible for policy. The director cannot require the department to investigate an incident. Chase and Santiago were at odds.

Subordinates are required to follow an order unless it is illegal. If an order is questionable, but not illegal, the subordinate should complete the order and document it or file a grievance. Shamberger and Piwowarczyk never approached him to say that Chase asked them to do something that they were uncomfortable with. The use of a police vehicle for non-police purposes is improper. Officers cannot use personal cars while on duty. If an officer is taking an IPD vehicle out of Irvington, the supervisor must be notified. Mitchell was never present in IA when Chase discussed repairs to the Chase vehicle with either Piwowarczyk or Shamberger.



On December 5, 2012, Mitchell was the senior law enforcement officer of IPD because Chase had been suspended on December 3, 2012. Mitchell had previously been the senior law enforcement officer when Chase was on vacation. Piwowarczyk submitted an overtime report. Piwowarczyk was on the police director's detail. Piwowarczyk was told to follow Chase by Santiago. Mitchell told Piwowarczyk that they do not take orders from the director. On December 4 and 6, 2012, Shamberger submitted an overtime report. He was also on the police director's detail. Mitchell was concerned that Santiago ordered Shamberger and Piwowarczyk. Santiago did not have the authority to direct officers to do details. Santiago did not contact Mitchell regarding having Piwowarczyk and Shamberger follow Chase. Mitchell did not approve the December 6, 2012, overtime report of Shamberger. Prior to the December 6, 2012, overtime report, he did not know that the director detail that Piwowarczyk and Shamberger were on was following Chase. He was not told why they were surveilling Chase. Santiago told Mitchell that Shamberger and Piwowarczyk were working under his authority and the prosecutor's authority. They argued, and Santiago threatened to suspend him. Mitchell met with Assistant Prosecutor Rodriguez to inform her that Santiago was interfering with the operations of IA officers. Rodriguez informed Mitchell that he oversaw the day-to-day operations of IPD, and the Prosecutor's Office did not ask Santiago to do surveillance of Chase. Piwowarczyk and Shamberger did not tell him that they were part of an ongoing investigation into Chase.

Mitchell wanted to move Shamberger and Piwowarczyk out of IA. He felt that they were doing something unacceptable and IA officers should be above reproach. Mitchell received a letter from the attorney of Shamberger and Piwowarczyk as well as the city business administrator stating they were told that they would not be moved from IA for cooperation with the investigation. Mitchell was not told anything about the investigation. Mitchell met with Mayor Smith, Braker, Rodriguez, and Santiago. He wanted Shamberger and Piwowarczyk moved out of IA with no change in their status. Braker was fine with this but Santiago wanted them to remain in IA. He moved Shamberger and Piwowarczyk to the Detective Bureau so that they would not lose their status. Mitchell wrote a letter to the Mayor of Irvington complaining of a hostile work environment. Mitchell was encouraged not to reassign Piwowarczyk and Shamberger

by Irvington Township Attorney Braker and Santiago. Mitchell did not have any involvement with the Chase investigation.

Mitchell was not interviewed by the Prosecutor's Office as part of the investigation. If prosecutors asked Shamberger and Piwowarczyk to do something, they would have to get it cleared through IPD. If the Prosecutor's Office directed them to investigate, they could do the investigation in 2012, he did not work day-to-day with Shamberger. He was not in charge of IA. Mitchell and Chase are close friends.

Mitchell is aware that Shamberger and Piwowarczyk filed a notice of claim, which could subject him to civil liability.

#### Michael Chase

Chase became an Irvington police officer in March 1975. He became a captain in February 1994 and became the director of police, a civilian title, in November 1994. Police Director is a policy position. In 1997 he was reassigned to Captain of the Detective Bureau. He was promoted to Deputy Chief in the summer of 1998, Acting Chief in 2002, and Chief in 2005. In 2012 Joseph Santiago became the Police Director. Chase was suspended in May 2012 for seven days.

In his forty-two years in law enforcement, he has seen officers help other officers with contracting work and other types of work outside of police work. He has used other officers for construction work, sheet-rock work, painting and mechanical work, and car repairs. Some of the officers had an outside business, other had mechanical or construction skills. This would occur outside of working hours. They are business transactions. He would not permit officers doing side jobs while they were on duty. He never ordered Shamberger or Piwowarczyk to have the Chase vehicle car repaired while they were on duty.

From March 2012 through December 2012, the Chase vehicle had mechanical problems. He took the car to be repaired in Maplewood but was not confident the repairs were done properly. He described the problem to Piwowarczyk because he had

prior auto repair dealings with Piwowarczyk. In March 2012, his wife's car was not working. Chase described the issue to Piwowarczyk, who volunteered to look at the car.

Chase never directed or suggested anyone including Piwowarczyk and Shamberger to repair the Chase vehicle. Piwowarczyk offered to look at the car and get it repaired. He never ordered Piwowarczyk or Shamberger to get the car repaired or to get the car repaired while on duty. Piwowarczyk's father had owned a gas station on Chancellor Avenue.

Chase did not know that Shamberger and Piwowarczyk took the Chase vehicle for repairs while they were on duty. Neither Shamberger nor Piwowarczyk told Chase that they were uncomfortable with having the chase vehicle repaired. Chase had no knowledge that on March 14, 2012, and August 23, 2012, Piwowarczyk and Shamberger had taken the Chase vehicle to be repaired on those days while they were on duty. Chase never spoke to Shamberger regarding the repairs to the Chase vehicle in August 2013.

Chase was speaking to Piwowarczyk in the CIC room of the Irvington Police Department. Piwowarczyk recorded their conversation. Chase and Piwowarczyk are talking on the tape and there are other voices in the background. Chase believes that there are gaps in the recording. The conversation occurred at the door of the CIC room. Chase discussed winning a gift certificate for auto repair service. Chase heard the word "Harrison" on the tape but did not hear Harrison during the actual conversation. Chase did not know that he was being taped.

There is another recorded conversation with Chase and Piwowarczyk. The taping was done on the first floor near the record bureau. Other voices can be heard in this tape. Piwowarczyk and Chase discuss the EZ pass. Chase told him that whoever incurred the EZ pass violation on the Chase vehicle on August 23, 2012, had to pay for it. He did not direct Piwowarczyk to pay for the EZ pass violation. Piwowarczyk said he would see if the EZ pass violation was issued in error. Chase eventually paid for the EZ pass violation.

On August 20, 2012, Chase issued a memo to all IA that if he needed to be contacted, they would contact him over a taped line that would be downloaded and converted to disc. This was the result of an administrative report Shamberger made of allegations of Chase not supervising IA, not reviewing reports and reports going past forty-five days, and Chase being inappropriate. Shamberger in the report stated that he could not get in touch with Chase. This was not true. Chase was on vacation when Shamberger wrote the memo. After this Chase wanted everything documented.

Chase states that he never gave Piwowarczyk or Shamberger an order to do anything with the chase vehicle.

Chase was suspended without pay on December 3, 2012. The suspension was converted to being with pay five days later. He was returned to the position of chief in July 2014. Mitchell was the acting chief as of December 5, 2012. He is a friend of Chase. While he was suspended Chase spoke to Mitchell. He had no input in report that Mitchell wrote stating that Shamberger were taking orders from Santiago. Mitchell complained to the township attorney regarding Piwowarczyk and Shamberger. He is aware that Mitchell was told to take no action against Piwowarczyk or Shamberger that would look like retaliation. Mitchell did not discuss reassignments with Chase. He believes that the charges were generated by factions in the IPD. The Police Director, Santiago, was used to having his orders followed. Police Director is a civilian position. The Director is responsible for policy, procurement, hiring, firing, and discipline. The Director is not in charge of the day-to-day operations of the police department. Santiago wanted to oversee everything. Officers do not take orders from the Police Director. Law enforcement officers are not permitted to take orders from civilians.

There were factions in the IPD in 2012. Officers answer to the chief for assignments and orders. Certain people obeyed his orders but were afraid of the Director. Chase was the only person who could make or change assignments.

Smith was placed in IA in 2011 to get acclimated. She was assigned to replace Gargas. In August 2012 there were three supervisors in IA. The table of organization

allowed two supervisors. While she was getting up to speed there were three supervisors, so either Shamberger or Piwowarczyk had to be reassigned. He spoke to Shamberger about someone having to be reassigned. Shamberger wanted to stay in IA. Shamberger was more likely to stay in IA because he had more experience than Piwowarczyk. The conversation with Shamberger took place in the Spring of 2012. Shamberger was in IA for ten years prior to Smith's arrival and Piwowarczyk was in IA for two-and-one-half years prior to Smith's arrival. Piwowarczyk and Shamberger wanted to stay in IA. They both had difficulties with Smith's management style. There was a meeting about Smith's management style.

Sergeant Townsend and Sergeant Collura were required to check on personnel and keep a log sheet, meet subordinates, and show contact and oversight. Townsend was investigated and charged. Townsend said that Collura did the same thing he did and was not charged. Chase ordered Shamberger to investigate Collura. Shamberger said he did not think he could do the investigation. Chase believed that Shamberger did not want to do the investigation because Collura was a friend of Santiago. Chase ordered Shamberger to bring charges against Collura. Shamberger did not serve the charges within forty-five days on Collura, therefore he did not have an administrative hearing. Shamberger was not charged for not serving the charges on Collura.

Shamberger and Piwowarczyk were on the civil service promotional list. They received a notice from Civil Service that they did not agree with, they spoke to Santiago who recommended a lawyer to them.

Chase stated that he never asked Piwowarczyk or Shamberger to have his vehicle repaired while he was on duty. Chase paid for all the repairs done on the vehicle. Chase never directed Shamberger or Piwowarczyk to use a police car to help facilitate the repairs on the vehicle. He did not know the place where the vehicle was repaired was in Harrison. Chase never demanded that Piwowarczyk to pay the EZ pass violation. Chase was truthful in his interview with the Prosecutor's office. Chase never directed Piwowarczyk to pay for repairs to the Chase vehicle.

In August 2013, the Prosecutor's Office did an audit of the IPD. Chase did not know he was being investigated until he was interviewed. Tromboli is the lawyer for Piwowarczyk and Shamberger. Tromboli sent a letter to Marvin Braker, attorney for Irvington, stating that Shamberger and Piwowarczyk among other things were ordered to perform personal business for Chase while on duty.

On August 23, 2012, Chase received a memo from Santiago to reassign Smith because Smith and Chase were being investigated. Smith was never charged. She was reassigned to a different division. Chase was interviewed by the Prosecutor's Office on November 19, 2012, and was charged on December 2, 2012. Chase believes that the prosecutors' investigation was not fair or impartial. He believes that Santiago, Gardiner, Gargas, Mondalis, Shante Porter, Felicia Taylor, and Smith should have been interviewed. Piwowarczyk and Shamberger stated that conversations about the car took place in the IA office where Gardiner and Mondalis were present.

When the Chase vehicle was returned in August 2012, Chase did not see Piwowarczyk. The Prosecutor's Office interviewed Piwowarczyk the day the car was returned in August 2012. Chase paid Piwowarczyk \$425 for the repairs. The Prosecutor's Office did no investigation regarding the EZ pass violation.

In 2012 there was tension at the IPD. Santiago was at odds with Chase regarding Chase's authority in the IPD. Officers do not answer to the director. Chase gave out assignments and duties. He was responsible for the day-to-day function of the IPD. Santiago was involving himself in the day-to-day operations of the IPD.

Piwowarczyk and Shamberger were in the Santiago faction of the IPD. Shamberger apologized to Santiago for investigating Collura. Santiago gave Chase an order, which he refused in May 2012. Chase was charged but the charges were dismissed. Santiago tried to take over the day-to-day operations of the IPD, but he did not have the authority to do so.

Chase was present at the prior disciplinary hearing where Santiago testified that he only looked at the transcript of Piwowarczyk, Shamberger, Chase, and one other person and the prosecutor's report before drafting the disciplinary report.

In May 2012, Santiago gave Chase an order to order Koontz to appear at the COMSTAT meeting. Chase said that Santiago cannot give that order. Santiago told Chase he would be suspended if he did not order Koontz to the meeting. Chase refused. A charging document was drafted. Santiago wanted Chase to sign the charging document regarding Chase, which he refused. Chase's suspension was not referred to the Prosecutor's Office. Officers were concerned with Santiago attending COMSTAT meetings. Chase told them if Santiago gave them an order, come to Chase. Chase brought the concerns to the business administrator.

Santiago never gave a verbal order to violate the attorney general guidelines. Santiago did not ask Chase to reduce the number of supervisors in IA.

#### Joseph Santiago

Santiago was the police director for IPD during the time in question. He is currently the municipal improvement officer for Irvington. He has been in law enforcement for over fifty years. He was previously the director of Trenton Police. Chase was the chief of police when Santiago was the police director of Irvington. He reports to the mayor and the chief reports to him. The duties of the director are to oversee and establish rules regulations and procedures, promulgate directives, the table of organization and render discipline as the hearing officer. The police director is subordinate to the mayor. Santiago became aware of the charges against Chase from City Attorney Braker. Braker had received a letter from Piwowarczyk and Shamberger's attorney. The Director is not in charge of the day-to-day operations of the police force. The Director can only give orders to the chief. Santiago contacted the Prosecutor's Office who informed him that Chase was being investigated regarding car repairs in 2012. He did not know about this investigation prior to August 2012. Piwowarczyk and Shamberger never approached him regarding problems they had with Chase before he was informed of their lawsuit.

Santiago knew Tromboli from when he worked in Trenton. Tromboli was an attorney who did labor law work. He hired Tromboli to handle a case regarding Santiago's pension. Tromboli was occasionally used in disciplinary hearings. Piwowarczyk asked Santiago's advice regarding retaining an attorney for an issue regarding the Civil Service list. He never steered Piwowarczyk or Shamberger to file a lawsuit against Chase or Irvington. He suggested Tromboli to them regarding a federal consent order that froze promotions.

Santiago was not part of the Prosecutor's Office investigation of Chase, except that he secured the EZ pass records.

The Prosecutor's Office took over IA on August 23, 2012. They placed someone in IA to oversee it because the personnel in IA reported to the chief. The Prosecutor's Office sent Santiago a letter regarding its investigation of Chase in November 2012. There were findings in the report and Santiago was directed to instigate disciplinary charges based on the prosecutor's report. At that time Santiago instituted charges against Chase. Santiago did not issue the Final Notice of Disciplinary Action against Chase. He did sign off on the Preliminary Notice of Disciplinary Action.

If Santiago wanted an action taken, he spoke with Chase. Santiago did not have an operational role. Santiago's relationship with Chase was good until 2012. In establishing what anyone outside of the Chief does, the Director creates a general order which states what is to be done and how it is to be done. The Chief decides who fulfils the general order. Santiago does not recall a restriction on the number of supervisors in IA.

There was a general order that there were monthly departmental COMSTAT meetings. Santiago developed COMSTAT to track crime and performance. Koontz was supposed to give a report on patrol at the meeting, but she did not come to the meeting. Santiago suspended Koontz. Santiago ordered Chase to have Koontz to appear at COMSTAT meeting. Chase declined the order. This created an issue between Santiago and Chase. Santiago suspended Chase as a result of the conflict.



There was no investigation done because Chase refused to follow an order. The suspension was dismissed, but this changed the relationship between Chase and Santiago. There were no Chase and Santiago factions in the IPD

The Chief determined who was in IA. Santiago did not decide who was in IA. When Gargas retired on December 1, 2011, Chase chose Smith to replace Gargas as the head IA. Santiago never had a conversation with Chase about getting Piwowarczyk and Shamberger reassigned out of IA. He did not discuss the number of supervisors in IA with Chase. He did not pressure Chase to limit the number of supervisors in IA. Gargas was rehired as a police aid in February 2012 and resigned that position in July 2012.

Sergeant Townsend recorded his activities but did not record his supervisory visits. At the hearing it was determined that Townsend was making his supervisory visits but did not record them. Santiago dismissed the charge against Townsend and directed him and other supervisors to undergo training regarding recording supervisory visits.

After the fact Santiago became aware that Collura was being investigated by Shamberger. Collura was investigated for the same reason as Townsend, not recording supervisory visits. Shamberger told Santiago that Chase wanted Collura charged because Townsend had been charged. Collura's disciplinary sheet was never sent to him. The issue with Collura and Townsend was a training issue. Santiago was friendly with Collura as a colleague not a friend. Collura was charged repeatedly while Santiago was Director. Santiago said the he did not recall speaking to Shamberger regarding Collura, although Shamberger mentioned the conversation in his interview with the Prosecutor's Office.

Santiago does not recall interfering with any lawful order of Chase. He interacted with IA in his role as hearing officer and Director.

The Table of Organization changed in 2013. One of the functions of the Police Director is to set policy. Santiago created the Table of Organization for IPD. He can

define how many people in each area of the table of organization, but the chief chooses the people to go into the positions. If there is a vacancy in the table of operation, Santiago had no role in filling the vacancy. The IPD Table of Organization does not list the number of people in each unit. The Chief is responsible for the day-to-day operations of the IPD.

If there was a homicide, he would ask for a status, but not direct the officers how to perform the investigation. If an officer had a policy question it would usually go through the chain of command. If he was asked a policy question by an officer, he would answer the question.

Santiago did not become aware of an IA case unless it was substantial. He cannot talk to witnesses in pending cases. Police Director does not play a role in IA. The Police Director is a civilian. He never spoke about pending IA matters. Santiago and Chase spoke daily.

In the transcript of Shamberger's interview with the Prosecutor's Office, Shamberger's statements in the interview do not amount to a direct order from Chase. Santiago charged Chase with ordering Shamberger to have the Chase vehicle repaired because Chase directed Piwowarczyk to have the Chase vehicle repaired and allowed Shamberger to accompany Piwowarczyk. Santiago reviewed the exhibits and evidence that the Prosecutor's Office had when he drafted the charges against Chase.

In 2012 Santiago did not have a conversation with Piwowarczyk and Shamberger regarding an investigation of Chase. After the Prosecutor's Office issued the report, Santiago used Piwowarczyk as a conduit for the PNDA. Santiago never ordered the Piwowarczyk or Shamberger to investigate Chase.

### **FINDINGS OF FACT**

Considering the contradictory testimony presented, the resolution of the charges against Smith requires that I make credibility determinations regarding the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the

finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-522 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

In this matter the crucial witnesses are Chase, Piwowarczyk, and Shamberger. Having had an opportunity to observe the demeanor of the witnesses, I **FIND** each are credible in some ways and less credible in others. Piwowarczyk in his interview stated that Chase asked, not ordered, him to get the Chase vehicle repaired. In addition, the conversation taped by Piwowarczyk of he and Chase discussed the car and where it would be repaired but did not have Chase ordering or directing him to repair the Chase vehicle. Piwowarczyk also took Taylor to have her son's vehicle repaired while he was on duty.

Chase testified that he did not order Piwowarczyk or Schamberger to have repairs done to the Chase vehicle while on duty, but he called Shamberger on August 23, 2012, and stated that he needed the car by 1:00 p.m. when Shamberger was on duty. Shamberger did not hear the conversations between Chase and Piwowarczyk regarding car repairs to the Chase vehicle on March 14, 2012, and August 22, 2012, which he admitted. I found him to be more credible than Piwowarczyk and Chase.

Based upon a consideration of the testimonial and documentary evidence presented in the file, I **FIND** the following **FACTS**:

Chase became an Irvington Police Officer in March 1975. He became the Chief of the Irvington Police Department in 2005. The Chief is responsible for the day-to-day operations of the police department. Santiago became the Police Director of IPD in 2012. The duties of the Police Director are to oversee and establish rules, regulations, and procedures, promulgate directives, the table of organization, and render discipline as a hearing officer.

In 2012 Piwowarczyk and Shamberger were assigned to IA. IA was under the control of Chief Chase. Smith was their direct supervisor from December 2011 to August 2012. In 2012 Piwowarczyk and Shamberger's work schedule was 8:00 a.m. to 6:00 p.m. Piwowarczyk and his family had previously owned an auto repair business. Mitchell, Taylor, and Vann purchased vehicles or had vehicles repaired by Piwowarczyk's business. Between 2008 and 2010 Taylor's son's car needed repairs. She spoke to Piwowarczyk and followed him to the repair shop during the day while they were both on duty. She took her son's car and Piwowarczyk drove her back to headquarters in a police car.

On March 14, 2012, while he was on duty, Chase told Piwowarczyk that there were difficulties with the Chase vehicle. Chase asked Piwowarczyk to have the vehicle repaired. Chase told him what the problems with the car were. Shamberger could hear this conversation. The Chase vehicle was in the parking garage on at 561 Nye Avenue, Irvington. Chase gave Piwowarczyk the keys to the vehicle. Piwowarczyk drove the Chase vehicle on March 14, 2012, to Carfix to be repaired. Shamberger followed him in an unmarked police car. Piwowarczyk paid for the repairs in cash. Piwowarczyk was given a wholesale discount on the repairs and parts. Chase repaid him for the repairs in cash.

Piwowarczyk knew the owner of the Carfix repair shop, Szymaczak, through mutual friends. He has known him for eight years. He has no business interest in Szymaczak's car repair business. He did not receive money for bringing car to be

repaired to Szymaczak. Piwowarczyk has referred friends and colleges to Carfix prior to August 2012. Prior to August 2012, he introduced Captain Mitchell to Szymaczak at Carfix. Mitchell received a wholesale discount from Carfix. Mitchell and Ana Perez purchased vehicles from Piwowarczyk. Piwowarczyk also referred Sergeant Herzer and Officer Halper to Carfix.

Piwowarczyk does not know if Chase knew that the repairs were done at a wholesale discount. Chase knew that the repairs were done at a favorable price because the invoice showed there was no charge for certain things and Chase was given the invoice. Piwowarczyk never asked if Chase could drop the vehicle at Carfix. Chase did not give him the keys to the vehicle after business hours.

In August 2012, Piwowarczyk and Shamberger requested a meeting with the Essex County Prosecutor's office. They met with Assistant Prosecutor Rodriguez and Deputy Chief of Detectives Spruill. Piwowarczyk and Shamberger had questions but felt they needed a lawyer. They requested a second meeting with their attorney present. At the second meeting Piwowarczyk and Shamberger alleged that Chase ordered them to have the Chase vehicle repaired while they were on duty. The Prosecutor's Office initiated an investigation after this meeting. Spruill asked for proof and told them that they had to give a specific statement.

On August 22, 2012, Piwowarczyk and Shamberger called the Prosecutor's Office stating that Chase had asked him to take the Chase vehicle in for repairs. Chase told Piwowarczyk that the Chase vehicle needed repairs. They spoke about what the problem might be. Piwowarczyk and Chase retrieved the car keys from Jessica Chase. Spruill reported the allegations to Chief Ambrose and Rodriguez. Ambrose recused himself from the investigation because he was a friend of Director Santiago. The Prosecutor's Office began an investigation. Spruill had her staff bring Piwowarczyk and Shamberger into the East Orange Office of the Prosecutor's Office to take pictures of the Chase vehicle.

Hancock verified that the Chase vehicle belonged to Chase's wife. Spruill was not aware that the car insurance was invalid. The Chase vehicle being dropped off at Carfix was videotaped by the Prosecutor's office. Spruill does not recall if Piwowarczyk

had on a body microphone. The use of a body microphone requires wiretapping authorization. The owner of Carfix was not a target of the investigation.

Hancock was an officer in the Essex County Prosecutor's Office from 1999 to 2014. On August 22, 2012, he received a call from Spruill, who was a captain at that time, instructing him to meet with Piwowarczyk and Shamberger and identify and videotape a car.

Hancock met Piwowarczyk and Shamberger on August 22, 2012, at the Prosecutor's Office at 7 Glenwood Avenue, East Orange, N.J. at approximately 3:50 p.m.

They arrived in two cars, one an unmarked police vehicle, and the other was the Chase vehicle. Hancock, Rectenwald, and Vinci took pictures of the Chase vehicle inside and outside of the vehicle. The pictures included expired insurance cards for Jessica (Dilkes) Chase. Rectenwald verified that Jessica Chase was the owner of the Chase vehicle. The insurance verification was done by another person involved in the investigation. He did not have a search warrant to search the Chase vehicle but was authorized by Piwowarczyk and Shamberger to search the Chase vehicle.

Brewington was assigned by Spruill to investigate charges of improper use of personal by Chase. The investigation was to determine if Chase used police personal to do non police duties regarding the repair to the Chase vehicle. Detective Michael Rectenwald, Hancock, Lieutenant Steve Roberts, Detective Mitchell McGuire, and Detective Joe Illiano worked on the investigation under Brewington. The investigation included verifying that the car was owner by Chase's wife, examining EZ pass records from where the car traveled, reviewing cell phone records of Piwowarczyk and Shamberger interviewing Luskasz Szymczak, the owner of SOS Carfix LLC (Carfix), interviewing Piwowarczyk, and reviewing video downloads from Carfix. Szymczak was interviewed on August 24, 2012. He stated that he did repairs on the vehicle that Piwowarczyk brought him. Another person was with Piwowarczyk that looked like Shamberger.

On August 22, 2012, Piwowarczyk drove the Chase vehicle to Carfix, Shamberger drove the unmarked police vehicle behind Piwowarczyk and Hancock followed the unmarked police vehicle with Rictenwald and Vinci. Hancock taped the ride from the Prosecutor's Office to the Carfix in Harrison. There were no tolls between the Prosecutor's Office in East Orange and Carfix in Harrison. He parked down the street from Carfix and recorded Piwowarczyk leaving the vehicle and speaking with the owner of Carfix. Piwowarczyk went into Carfix with the owner. He did not observe the conversation between Piwowarczyk and the owner of Carfix. Piwowarczyk later exited Carfix, entered the vehicle with Shamberger and exited the area. Hancock did not follow them back to Irvington. Hancock next met with Brewington, put the recording onto a disc and put the disc in evidence.

Once he returned to IPD, Piwowarczyk spoke to Chase. Piwowarczyk taped the conversation. They spoke about the Chase vehicle and where it was going to be repaired. Shamberger was not present for the taped conversation.

On August 23, 2012, the members of the Prosecutor's Office, including Spruill came to the PD IA unit to review its files. On that day Chase called Shamberger stating that the Chase vehicle needed to be picked up at approximately 1:00 p.m. Shamberger's phone log shows a call from Chase on August 23, 2012, at 12:39 p.m. Spruill and Hancock were present when he received the call from Chase. Shamberger told Spruill of his conversation with Chase. She told him to get Piwowarczyk, pick up the car, and bring it back. Spruill informed Hancock that Shamberger and Piwowarczyk were going to pick up the Chase vehicle and for him to follow them. He met with Piwowarczyk and Shamberger at the Prosecutor's Office. They were in an unmarked police vehicle. He followed them to Carfix while recording ride to Carfix. Hancock was alone at that time. Piwowarczyk once at Carfix got out of the unmarked police vehicle and went into Carfix. Piwowarczyk exited Carfix and entered the Chase vehicle. Piwowarczyk and Shamberger took Route 280 to the Garden State Parkway to the Irvington exit then went to Irvington Town Hall. There was at least one toll from Carfix in Harrison and the Irvington Town Hall. Hancock brought the recording to the Prosecutor's Office and returned to Irvington Town Hall, where Piwowarczyk gave him the invoice from Carfix, a copy of a check which he paid for the repairs, and an audio

recording. The main object of each surveillance was to take pictures and record the Chase vehicle.

While returning from Carfix to Irvington on August 23, 2012, Piwowarczyk went through a toll while driving the Chase vehicle resulting in an EZ pass violation. The EZ pass violation occurred at 1:43 p.m. at the East Orange toll. Chase showed Piwowarczyk the violation, stating that the Chase vehicle did not have EZ pass and that he expected the ticket to be paid. The EZ violation occurred on August 23, 2012, at 1:43 p.m. The cost of the ticket was \$50.50.

Chase never directly told Piwowarczyk to get the Chase vehicle repaired while he was on duty and bring Shamberger with him. Piwowarczyk felt obligated to appease Chase. Piwowarczyk was not disciplined for getting the Chase vehicle repaired while he was on duty.

On August 24, 2012, Hancock along with Brewington and Lieutenant Roberts took a statement from the owner of Carfix. They received additional invoices on that date. One was an invoice for work done on the Chase vehicle in the amount of \$405, which the owner signed on the back. There was also a work order for March 14, 2012, in that amount of \$174.47. Hancock next put the recordings on a disc and placed the paperwork in evidence. All of which was turned over to Brewington.

On August 24, 2012, Piwowarczyk was interviewed by Brewington and Hancock of the Essex County Prosecutor's Office regarding among other things taking the Chase car to be repaired in March and August 2012. Piwowarczyk stated that he felt compelled to get the Chase vehicle repaired because Chase was his superior officer. Chase never directly told Piwowarczyk to get the car repaired while on duty or have Shamberger follow Piwowarczyk to get the car fixed or to use a police vehicle to transport Piwowarczyk to and from Carfax.

Shamberger was present in March 2012 when Chase gave Piwowarczyk the keys to the Chase vehicle for repairs. Chase spoke to Piwowarczyk. Shamberger followed Piwowarczyk to Carfix and they returned to IPD together. On August 22, 2012,



Piwowarczyk told Shamberger that they had to take the Chase vehicle for repairs. Chase did not speak to Shamberger and Shamberger did not hear the conversation between Piwowarczyk and Chase. He again followed Piwowarczyk to Carfix and they returned together to IPD. Both incidents occurred while Shamberger was on duty. Neither Shamberger nor Piwowarczyk told their supervisor, Smith, that they were leaving to take the Chase vehicle for repairs. On August 24, 2012, Shamberger gave a statement to Spruill and Hancock of the Essex County Prosecutor's Office. In that statement Shamberger did not state that on August 23, 2012, that Chase called him and told him that the vehicle had to be back by 1:00 p.m.

Smith was assigned as a sergeant then a lieutenant in IA approximately September or October 2011. Gargas was the supervisor when she arrived at IA. She was promoted to lieutenant in December 2011. At that time Shamberger and Piwowarczyk worked in IA under her. Smith became supervisor of IA when Gargas retired, approximately January 2012. Piwowarczyk and Shamberger did not tell Smith that they were taking the Chase vehicle to be repaired in March 2012 or August 2012. They did not tell Smith that they believed that Chase was ordering them to have the Chase vehicle repaired. Piwowarczyk and Shamberger believed that Smith was an ally of Chase.

When an officer is leaving the jurisdiction, he must immediately report that to his supervisor. If a detective receives a directive from the chief, he does what he is told to do and informs his direct supervisor as soon as possible. However, Spruill stated that if a chief tells an officer to do something, the officer would not then go to his supervisor. If an officer is on a special or confidential assignment, he would not tell his supervisor. Generally, the supervisors know what their subordinates are doing.

An officer cannot drive a personal car while on duty.

Rodriguez supervises various units of the Prosecutor's Office including the Professional Standards Unit. Her responsibility is to make sure police departments are conducting proper investigations and managing police business correctly and conduct investigations into police department complaints. There are not two chains of command

at the Prosecutor's Office. The Prosecutor is the chief law enforcement officer in the county. He can appoint a Chief of Detectives that reports to him. The Prosecutor can appoint Assistant Prosecutors, who can direct any investigation. The Professional Standards Unit is a specialized unit in the Prosecutor's Office. Lieutenants are assigned as investigators in the professional standards unit. If a lieutenant has an issue that is legal, he speaks to the assistant prosecutor.

In the summer of 2012 Rodriguez was called into Spruill's office. Shamberger was in the office. At that time, she became aware of the complaint that Chase required Shamberger and Piwowarczyk to get the Chase vehicle repaired during work hours. The Prosecutor's Office investigated the complaint. Spruill was the Deputy Chief of the Professional Standards Unit at that time. Spruill oversaw the investigation. Brewington was brought in specially to investigate this matter. Hancock, Stan, Rosa, and Rectenwald were also involved in the investigation.

Essex County Prosecutor Paul Polidoro was the primary Prosecutor assigned to direct the Prosecutor's Office investigation of Chase. He did not ask for anyone to be questioned as part of the investigation. Polidoro and Spruill interviewed Chase. He also reviewed the Prosecutor's Office's interview of Shamberger. He prepared a report, which was sent to his superiors. The report was based on a taped conversation between Chase and Piwowarczyk. Polidoro believes that Chase was evasive when being interviewed. The Prosecutor's Office recommended that charges be brought against Chase.

Chase was interviewed in the Prosecutor's Office on November 19, 2012. Spruill, Polidoro, Chase, and his attorney Donohue were present for the interview. Chase spoke of the responsibilities of the police director. In the interview, Chase stated that the director can change the table of organization and is supervised by the Irvington business administrator. The chief's supervisor is the Essex County Prosecutor.

Chase stated that his wife has a two-door Monte Carlo and that she works for the City of Irvington. He stated that he never ordered IA personnel to take his wife's car to be repaired. He had previously purchased cars from Piwowarczyk, who had previously

done repair work on his cars through his family's company. He told Prosecutors that he told Piwowarczyk that his wife's car needed repair and Piwowarczyk said he would take care of it. Chase dropped the car off on Chancellor Avenue. He asked when the repairs would be done, but Piwowarczyk could not give him an exact time. In the year before the interview Chase had asked Piwowarczyk to fix his cars twice. Chase paid for the repairs. Later in the interview Chase said when he had car trouble, he asked Piwowarczyk if his father could fix the problem. Piwowarczyk would say no problem, leave the key or drop it off at a certain place. After Piwowarczyk's family sold its gas station, Chase believed the repairs were made in Union. He stated that he told Piwowarczyk not to take the car because of an incident where an officer was involved in an accident while he was on duty using his personal car. No officer can drive his personal car when they are on duty for insurance reasons. Chase stated that the Chase vehicle car does not have EZ-pass.

Chase would pay Piwowarczyk for the repairs in cash. Piwowarczyk paid for the repairs in cash and once with a check from his company. Piwowarczyk was repaid by Chase in the presence of Taylor.

On August 23, 2012, Piwowarczyk incurred an EZ pass violation while driving the Chase vehicle. The violation occurred at 1:43 p.m. at the East Orange Toll Plaza. Chase and Piwowarczyk spoke about the EZ pass violation. Chase stated that whoever incurred the EZ pass violation had to pay it.

Brewington uses the phrases ordered, asked for a personal favor, and directed, interchangeably. He testified that a superior officer asks an officer to do a favor it is taken as an order and that in law enforcement there is no difference in being asked to do something and being ordered to do something. It is an informal standard of communication.

Smith testified that there is a distinction between an order and a request. When a superior officer asks you to do something in furtherance of your duties, it is an order. If being asked to do something personal that is not part of your duties, it is a request. If a supervisor gives an illegal order, it cannot be followed and must be reported.

Gargas testified that if told to do something by a superior office, it is an order. He was assigned to IA until he retired. Gargas was never told by Shamberger or Piwowarczyk that Chase told them to have the Chase vehicle repaired. If requested to do something by a superior officer, it is not an order.

Chase's testimony regarding orders was that an Order can be a direct command or framed as a request. An order cannot be implied suggested or a request for a volunteer. He does not agree that most leadership authorities should frame orders as requests. He does not agree that an order by a superior to a responsible subordinate usually requires nothing more than a request. He is not familiar with the theory of four methods of giving orders. He does not recall ever being tested on the four methods of giving orders.

Santiago, the director of the IPD at the time, testified that there are different types of orders. An order can be in the form of a request to an experienced subordinate. Asking for volunteers for a disagreeable assignment is an order. A direct order will be given to more inexperienced officers.

Piwowarczyk and Shamberger filed a lawsuit against the City of Irvington and Chase. The case settled for \$220,000. There were divisions in the IPD. There was a Chase faction and a Santiago faction.

Chase is not pursuing a retaliation claim in this matter. Chase is not pursuing a CEPA claim in this matter.

### **LEGAL ANALYSIS AND CONCLUSION**

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible

evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

One of the grounds for discipline of public employees is “[c]onduct unbecoming a public employee.” N.J.A.C. 4A:2-2.3(a)(6). “Conduct unbecoming a public employee” is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

The charges of conduct unbecoming a public employee in this matter stem for three incidents March 14, 2012, August 22, 2012, and August 23, 2012, regarding whether Chase ordered Shamberger and Piwowarczyk to have the Chase vehicle repaired on public-duty time and used Piwowarczyk’s personal funds for the repairs.

The specifications of Charge One in the FDNA are that Chase engaged in eight violations of conduct unbecoming a public employee by directing Piwowarczyk to take the Chase vehicle for repairs on several occasion in 2012 and conduct private business while on police duty for the benefit of Chase. The testimony in this case centered on three incidents; namely March 14, 2012, August 22, 2012, and August 23, 2012. There was no testimony of other instances regarding the Chase vehicle in 2012.

On March 12, 2012, Chase asked, not ordered or directed, Piwowarczyk to have the Chase vehicle repaired. This occurred while they were both on duty. Piwowarczyk had sold cars or had cars repaired for other members of the IPD. Piwowarczyk did not testify that Chase ordered or directed him to take the car for repairs but that Piwowarczyk could not say no to Chase. In addition, there was no testimony that Chase ordered, directed, or insisted that the car repairs be done immediately or while Piwowarczyk was on duty.

On August 22, 2012, Chase asked, not ordered or directed, Piwowarczyk to take the Chase vehicle for repairs. The conversations occurred while both were on duty. The conversations did not specify a time or method that the Chase vehicle would be taken for repairs.

On August 23, 2012, Chase spoke to Shamberger by phone, not Piwowarczyk, regarding the repairs. In this conversation Chase informed Shamberger that he needed the Chase vehicle back by one o'clock. Chase knew that Shamberger and Piwowarczyk were on duty from 8:00 a.m. to 6:00 p.m. He knew that they were on duty at the time he specified that he needed the car.

I **CONCLUDE** that the charge of conduct unbecoming a public employee regarding the March 12, 2012, and August 22, 2012, incidents, is **NOT** sustained. The charge of conduct unbecoming a public employee regarding the August 23, 2012, incident is **SUSTAINED**. I **CONCLUDE** the other five instances of conduct unbecoming a public official is **NOT** sustained as there was no testimony regarding any other incidents.

Charge Two of conduct unbecoming a public employee specifies that on August 22, 2012, and August 23, 2012, Chase's conduct violated the rules and regulations and standards of employee conduct when he directed Piwowarczyk to do private business on public-duty time and utilize Piwowarczayk's personal funds to pay for repairs to the Chase vehicle. As to the first part of the charge as stated above Chase did not direct Piwowarczyk to have the Chase vehicle repaired on August 22, 2012, and August 23, 2012. Chase did not order Piwowarczyk to have the repairs made while on duty. When Chase asked Piwowarczyk if he could have the car repaired, there was no discussion of the time for the repairs. Piwowarczyk did pay for the repairs; however, he was reimbursed by Chase in the presence of Taylor. I **CONCLUDE** that this charge is **NOT** sustained.

Charge Three misuse of public property specifies that Chase misused public property by directing on duty officers to and a police vehicle to be utilized on four separate occasions in March 14, 2012, and August 2012. On the March 2012 incidents Chase did not direct officers or police vehicles to be utilized in having repairs made to the Chase vehicle. On August 22, 2012, Chase did not order an on-duty officer or police vehicle to be used to take the Chase vehicle for repairs. On August 23, 2012, Chase ordered Shamberger to have the Chase vehicle returned by 1:00 p.m. Chase knew that IPD officers cannot use private vehicles while on duty. I **CONCLUDE** that this charge is **NOT** sustained as to March 14, 2012, and August 22, 2012, incidents. However, this charge is **SUSTAINED** as to August 23, 2012, incident.

There is no Charge Four.

Charge Five prohibited activity in accordance with IPD manual specifies: Chase violated departmental rules when he directed and/or permitted Piwowarczyk to engage in prohibited activity on March 14, 2012, by requiring or permitting Piwowarczyk and Shamberger to take the Chase vehicle for repairs while they were on duty. Chase asked Piwowarczyk to have the Chase vehicle repaired. He did not state that Piwowarczyk should take the car for repairs while on duty. The evidence did not show that Chase knew Piwowarczyk and Shamberger took the car for repairs while they were on duty on March 12, 2012. I **CONCLUDE** that this charge is **NOT** sustained.

Charge Six prohibited activity on duty in accordance with IPD manual specifies: Chase violated departmental rules by demanding Piwowarczyk pay for the EZ pass violation that occurred on August 23, 2012, when Piwowarczyk drove the Chase vehicle. Chase did demand Piwowarczyk to pay the EZ pass violation acquired while Piwowarczyk was driving the Chase vehicle. I **CONCLUDE** this charge is **SUSTAINED**.

Charge Seven prohibited activity on duty in accordance with IPD manual specifies: Chase violated departmental rules when he directed/permitted Piwowarczyk to engage in prohibited activity on August 22, 2012, by requiring or permitting Piwowarczyk and Shamberger to take the Chase vehicle for repairs while they were on duty. Chase asked Piwowarczyk to have the Chase vehicle repaired. He did not state that Piwowarczyk should take the car for repairs while on duty. The evidence did not show that Chase knew Piwowarczyk and Shamberger took the car for repairs while they were on duty. I **CONCLUDE** that this charge is **NOT** sustained.

Charge Eight prohibited activity on duty in accordance with the IPD manual specifies: Chase violated the departmental rules when he directed/permitted Piwowarczyk to engage in prohibited activities on August 23, 2012, by requiring /and or permitting Piwowarczyk and Shamberger to take the Chase vehicle for repairs while they were on duty. On August 23, 2012, Chase ordered Shamberger to retrieve the car from the repair shop by 1:00 p.m. Chase knew that Piwowarczyk operated the Chase vehicle while on duty on August 23, 2012, because there was an E-Z pass violation for the Chase vehicle at approximately 1:30 p.m., that Chase told Piwowarczyk he had to pay. Chase knew that at 1:30p.m. Piwowarczyk was on duty when the EZ pass violation occurred. He knew that Piwowarczyk was driving the Chase vehicle and not an IPD vehicle. I **CONCLUDE** that this charge is **SUSTAINED**.

Charge Nine standards of conduct specifies: Chase directed members of IPD to take the Chase vehicle for repairs on two occasions in 2012 and pay for repairs in one instance, in doing so Chase failed to conduct his private and professional life in a manner as to avoid bringing the IPD in disrepute. Chase did direct Shamberger to pick up the Chase vehicle and return it by 1:00 p.m. on August 23, 2012. He did not direct



Shamberger and Piwowarczyk to have the car repaired on March 14, 2012, and August 22, 2012. Piwowarczyk paid for the repairs to the Chase vehicle but he was reimbursed by Chase. I **CONCLUDE** the portion of the charge as to Chase ordering member of the IPD to take the Chase vehicle for repairs on one occasion, August 23, 2012, is **SUSTAINED**, but Chase ordering a member of IPD to take the car to be repaired on another occasion and ordering a member of IPD to pay for the repairs to the Chase vehicle is **NOT** sustained.

Charge Ten obedience to laws and regulations specifies: Chase failed to observe the rules, regulations, procedures, orders and instructions of IPD when Chase directed and or permitted Piwowarczyk and Shamberger to engage in prohibited department activity when they transported the Chase vehicle for repairs while on duty on March 14, 2012. For the reasons stated under Charge Five, I **CONCLUDE** that this charge is **NOT** sustained.

Charge Eleven obedience to laws and regulations specifies: Chase failed to observe the rules, regulations, procedures, orders and instructions of IPD when Chase directed and or permitted Piwowarczyk and Shamberger to engage in prohibited department activity when they transported the Chase vehicle for repairs while on duty on August 22, 2012. For the reasons stated in Charge Seven, I **CONCLUDE** this charge is **NOT** sustained.

Charge Twelve obedience to laws and regulations specifies: Chase failed to observe the rules, regulations, procedures, orders and instructions of IPD when Chase directed and or permitted Piwowarczyk and Shamberger to engage in prohibited department activity when they transported the Chase vehicle for repairs while on duty on August 23, 2012. For reasons stated in Charge Eight, this charge is **SUSTAINED**.

Charge Thirteen obedience to laws and regulations specifies: Chase failed to observe the rules, regulations, procedures, orders and instructions of IPD when Chase demanded Piwowarczyk pay for the EZ pass violation that occurred on August 23, 2012, when Piwowarczyk was operating the Chase vehicle. For reasons stated in Charge Six, I **CONCLUDE** that this charge is **SUSTAINED**.

## DISCIPLINE

“Although we recognize that a tribunal may not consider an employee’s past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense.” In re Phillips, 117 N.J. 567, 581 (1990).

Ultimately, however, “it is the appraisal of the seriousness of the offense which lies at the heart of the matter.” Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

In re Carter, 191 N.J. 474, 484 (2007) (citing Rawlings v. Police Dep’t of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as “fairly proportionate” to offense)); see also In re Herrmann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

. . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head’s choice of penalty when the misconduct is severe, when it is unbecoming to the employee’s position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee’s position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

In this matter, Chase does not have a significant history of prior disciplines. However, as the chief of police and as a law enforcement for over thirty years, his conduct set a bad example for the IPD. Taking all of that into consideration I **CONCLUDE** that a six-month suspension is appropriate.

**ORDER**

It is hereby **ORDERED** that the decision of respondent to terminate Chase is **REVERSED**.

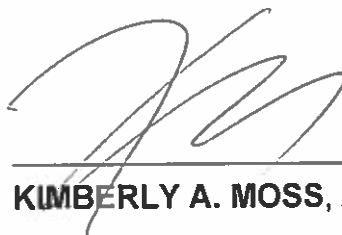
It is **FURTHER ORDERED** that Chase be suspended for 180 days.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

3-9-20  
DATE

  
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

3-9-2020

Date Mailed to Parties:  
ljb

3-9-2020



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**ORDER**

**SALARY PAYMENT**

OAL DKT. NO. CSR 05843-16

**IN THE MATTER OF MICHAEL CHASE,  
TOWNSHIP OF IRVINGTON..**

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**BEFORE: KIMBERLY A. MOSS, ALJ:**

On this date, I issued an initial decision in this matter which recommended that the disciplinary charges against appellant be sustained, but that the penalty be reduced from termination to 180 days. Therefore, pursuant to N.J.S.A. 40A:14-203(c), I Order the appointing authority to begin paying appellant the back pay that he is owed pending issuance of the final decision by the Civil Service Commission.

This Order is effective immediately and shall continue in effect until issuance of the Final Decision in this matter by the Civil Service Commission.

3-9-20

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Date

  
KIMBERLY A. MOSS, ALJ

## **WITNESSES**

### **For Appellant:**

Felicia Taylor  
Monique Smith  
Patricia Vann  
Nicolas Gargas  
Dwayne Mitchell

### **For Respondent:**

John T. Brewington  
Charles Hancock  
Franciszek Piwowarczyk  
Quovella Spruill  
Melvin Shamberger  
Clara Rodriguez  
Peter Polidoro  
Joseph Santiago

## **EXHIBITS**

### **For Appellant:**

- A-1 Inventory List of Documents from Deputy Chief Spruill dated November 29, 2012
- A-2 Continuation Report of Spruill dated September 10, 2012
- A-3 Letter from Stephen Trimboli, Esq. to Marvin Braker, Esq, dated August 22, 2012
- A-4 Continuation Report of Spruill dated August 24, 2012
- A-5 Essex County Prosecutor's Office Professional Standards Bureau Preliminary Report dated August 17, 2012
- A-6 Letter from Spruill to Irvington Police Director Joseph Santiago dated August 27, 2012
- A-7 Overtime Report of Detective Sergeant Franciszek Piwowarczyk dated December 3, 2012

- A-8 Overtime Report of Detective Sergeant Melvin Shamberger dated December 4, 2012
- A-9 Overtime Report of Shamberger dated December 6, 2012
- A-10 Various Administrative Reports of Captain Dwayne Mitchell from December 10, 2012, to February 4, 2013
- A-11 Sketch of CIC room and surrounding area of IPD
- A-12 Memo from Evans Anyanwu, Esq. to Shamberger dated December 4, 2013
- A-13 Memo from Evans Anyanwu to Detective Sergeant Jerry Alston dated October 8, 2013
- A-14 Ordinance of the Township of Irvington
- A-15 Preliminary Notice of Disciplinary Action
- A-16 Final Notice of Disciplinary Action

For Respondent:

- R-1 Captain John Brewington Continuation Report dated August 24, 2012
- R-2(a) Audio Statement of Louis Szymczak
- R-2(b) Transcript of statement of Louis Szymczak
- R-3(a) Jessica Chase DMV Photo
- R-3(b) Jessica Chase Registration for Chase Vehicle
- R-4 Hancock Continuation Report dated August 24, 2012
- R-5 Photos of Chase Vehicle taken by Essex County Prosecutor's Office
- R-6 DVD of Chase Vehicle taken by Essex County Prosecutor's Office
- R-7 DVD of pick up of Chase Vehicle in Harrison August 23, 2012
- R-8 Brewington Continuation Report dated September 7, 2012
- R-9 Receipt for Repairs at Carfix dated March 13, 2012
- R-10 Receipt for Repairs at Carfix dated August 23, 2012
- R-11 Check from Piwowarczyk for Repairs dated August 23, 2012
- R-12 Video Download from SOS Carfix Video Surveillance
- R-13(a) Letter from Spruill to Santiago regarding EZ Pass dated August 27, 2012
- R-13(b) EZ Pass Records August 22, 2012, and August 23, 2012
- R-14 EZ Pass Violation Notice of Enforcement Action dated August 23, 2012
- R-15(a) March 2012 and August 2012 work schedule of Piwowarczyk
- R-15(b) March 2012 and August 2012 work schedule of Shamberger

R-15(c) Not in Evidence

R-15(e) March 2012 work schedule for Chase

R-15(f) Not in Evidence

R-16 Extraction Reports from Shamberger's cell phone

R-17(a) August 24, 2012, DVD Statement of Piwowarczyk

R-17(b) August 24, 2012, Transcript of Piwowarczyk's Statement

R-18(a) DVD Statement of Shamberger

R-18 (b) August 24, 2012, Transcript of Shamberger Statement

R-19 Essex County Prosecutors Office Inventory Discovery List: Introductory Paragraph, Item B, and Closing are Not in Evidence

R-20 Recorded Conversation between Chase and Piwowarczyk at CIC Room

R-21(a) August 23, 2012, Recorded Conversation Between Piwowarczyk and Chase regarding cost of repairs

R-21(b) Transcript of Conversation between Piwowarczyk and Chase regarding the cost of repairs

R-22 August 23, 2012, Recorded Conversation between Chase and Piwowarczyk regarding EZ Pass

R-23 Complaint filed by Piwowarczyk and Shamberger on August 20, 2012 (only the portion regarding the Chase Vehicle are in evidence)

R-24 Letter from Harold Wallace to Mayor Wayne Smith regarding assignment change

R-25 Extraction Report from Piwowarczyk's cell phone

R-26(a) Transcript of Recorded Interview of Chase Part 1

R-26(b) Recorded Interview of Chase Part 1

R-27(a) Transcript of Recorded Interview of Chase Part 2

R-27(b) Recorded Interview of Chase Part 2

R-28 November 28, 2012, Audit of IPD Internal Affairs Unit and Investigation of Allegations against Chase (pages one to five only are in evidence)

R-29 Title Nine Notice of Claim of Piwowarczyk and Shamberger

R-30 Irvington Police Department immediate Suspension Order 2012-027 to Chase

R-31 December 13, 2012, letter from Joseph Donahue, Esq to Marvin T. Braker, Esq.

R-32 Pending Investigations Reports Memo dated November 20, 2012

R-33 IPD Administrative Report from Captain Dwayne Mitchell to Shamberger

R-34 Memo from Mitchell to Township Attorney Marvin Braker



- R-35 Memo from Mitchell to Irvington Business Administrator Wayne Bradley
- R-36 Memo from Braker to Irvington Mayor Wayne Smith
- R-37 January 17, 2013, Personnel Assignment Order Change of Assignment of Piwowarczyk
- R-38 January 17, 2013, Personnel Assignment Order Change of Assignment of Shamberger
- R-39 Pages Three to five and seven and eight of Audit of IPR IA and Investigation of Chase and Smith dated November 28, 2012
- R-40 Not in Evidence
- R-41 Not in Evidence
- R-42 Not in Evidence
- R-43 IPD Table of Organization
- R-44 IA Chart 2008-2019
- R-45 Instructional Counseling Notice dated June 4, 2012